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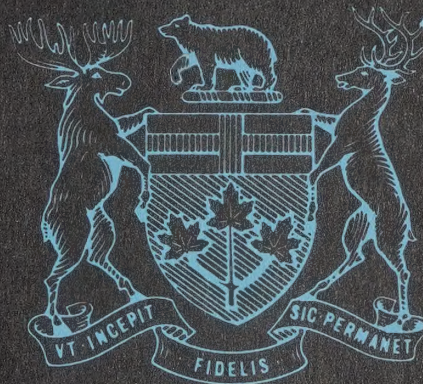
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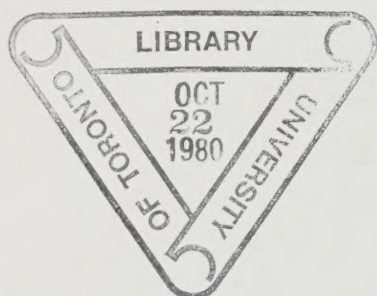
ONTARIO LABOUR RELATIONS BOARD

ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

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CASES REPORTED

ATOMIK CONST. CO. LTD. RE I.W.A.....	605
BARON HOTELS, SUDBURY LTD. RE H.R.E.U., RESTAURANT, CAFETERIA & TAVERN EMPLOYEES U., L. 254.....	573
BOARD, THE, OF EDUCATION FOR THE BOROUGH OF NORTH YORK RE L.U. 3219 C.J.A.....	602
BOARD, THE, OF GOVERNORS RYERSON POLYTECHNICAL INSTITUTE RE C.U.P.E.....	651
BUSH GAMBLE CO. LTD. RE R.W.D.S.U., AFL:CIO:CLC AND GROUP OF EMPLOYEES.....	644
COCHRANE NURSING HOME LTD. RE C.U.P.E.....	618
CORPORATION, THE, OF THE TOWN OF MARKHAM RE H. M. ARNOTT, ET AL AND L. 1219, C.U.P.E. AND C.U.P.E.....	616
DEL ZOTTO PROPERTY MANAGEMENT RE ONT. HOUSING CORPORATION EMPLOYEES L. 767, C.U.P.E.....	637
DEL ZOTTO PROPERTY MANAGEMENT RE SERVICE EMPLOYEES U., L. 204, AFF'L WITH S.E.I.U., A.F. OF L. C.I.O., C.L.C.....	640
DOMINI SHOE PRO. LTD. RE U.S.W. AFL CIO CLC.....	590
EPE-PIONEER ELECTRIC LTD. RE I.U.E. - AFL, CIO, CLC AND DRAFTSMENS ASSOC. OF ONT., L. 164, A.F.T.E., A. F. OF L. - C. I. O., C. L. C. AND GROUP OF EMPLOYEES.....	652
ETOBICOKE FORMING LTD. RE CANADIAN U. OF CONST. WORKERS AND COUNCIL OF CONCRETE-FORMING TRADE U. AND I.U.O.E. L. 793.....	664
FPE- PIONEER ELECTRIC LTD. RE I.U.E. - AFL, CIO, CLC AND DRAFTS- MENS ASSOC. OF ONT., L. 164, A.F.T.E., A. F. OF L. - C. I. O., C. L. AND GROUP OF EMPLOYEES.....	599
FREEMAN ELECTRIC LTD. RE I.B.E.W., L.U. 120.....	563
FRONTENAC BEVERAGES REG'D RE TEAMSTERS, CHAUFFEURS, WAREHOUSE- MEN & HELPERS, L. 91 AFF'L WITH T.C.W.H.....	585

GENERAL CONTRACTORS' SECTION OF THE TORONTO CONST. ASSOC., THE, AND L.I.U., L. 506 AND ERECTORS DIV., ONT. PRECAST CON- CRETE MANUFACTURERS' ASSOC. AND L.I.U., ONTARIO PROVINCIAL DISTRICT COUNCIL.....	577
GLOBE, THE, & MAIL LTD. AND THE TORONTO PHOTO-ENGRAVERS' U., No. 35P, L.P.I.U.....	567
GRANDVIEW INDUSTRIES LTD. RE I.M.A.W.....	569
HYDRO-ELECTRIC POWER COMMISSION OF ONT., THE, AND T. B. ABBOT, ET AL.....	575
KAPUSKASING Bd. OD EDUCATION RE C.J.A. AND C.U.P.E.....	587
LIVINGSTON TRANSPORTATION LTD. RE I.W.A.....	590
LIVINGSTON TRANSPORTATION LTD. RE I.W.A.....	650
MARTEL, J. E., & SONS LUMBER LTD. RE I.W.A.....	671
NOR-PIPE CONST. LTD. RE I.U.O.E., L. 793.....	604
NORTHDOWN DRYWALL & CONST. LTD. AND C.J.A., L. 18; W.W.M.L., L. 562; ROBERTSON-YATES CORPORATION LTD.....	666
NORTHERN ELECTRIC CO. LTD. RE U.A.W. AND CANADIAN UNION OF COMMUNICATION WORKERS AND U.E.....	626
OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOC. RE CSAO NATIONAL (INC.).....	630
OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOC. RE CSAO NATIONAL (INC.).....	657
OTTAWA GENERAL HOSPITAL RE CSAO NATIONAL (INC.).....	681
PEEL COUNTY Bd. OF EDUCATION, THE, RE C.U.P.E. AND PEEL COUNTY Bd. OF EDUCATION CARETAKERS' ASSOC., THE,.....	597
PETRIFOND FOUNDATION CO. LTD. RE C.J.A., L. 93 AND I.U.O.E., L. 793 AND L.I.U., L. 527.....	586
PIGOTT CONST. CO. LTD. RE LUMBER & SAWMILL WORKERS U., L. 2693 C.J.A. AND A PROVINCIAL COUNCIL OF CONST. U.....	565
PURETEX KNITTING CO. LTD. RE CANADIAN TEXTILE & CHEMICAL U.....	611

PURETEX KNITTING CO. LTD. RE CANADIAN TEXTILE & CHEMICAL U.....	676
RANEY BRADY AND C.J.A. - L.U. 38 - AND C.J.A. - ONTARIO PROVINCIAL COUNCIL AND L.I.U., L. 837 AND L.I.U. - ONTARIO PROVINCIAL COUNCIL AND J. DONALD O'SHEA - MISSISSAUGA, ONTARIO.....	649
RCA LTD. RE JOHN VAN BENDEGEM RE I.W.A. L.U. 2-353.....	570
R. W. S. DELIVERY SERVICES LTD. AND MILK & BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS & ALLIED EMPLOYEES, L. 647 AFF'L WITH T.C.W.H. AND SWISS CHALET BAR-B-Q A DIVISION OF HARVEY'S FOODS LTD.....	632
ST. JOSEPH'S HOSPITAL, HAMILTON RE C.U.P.E. AND CSAO NATIONAL (INC.).....	578
ST. JOSEPH'S HOSPITAL, LONDON, ASSOCIATION OF NURSES AND THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON, IN ONTARIO.....	661
ST. THOMAS SANITARY COLLECTION SERVICE LTD. RE C.U.P.E. AND GROUP OF EMPLOYEES.....	600
SHERMAN SUPERSONIC INDUSTRIES (CANADA) LTD. RE U.S.A.....	606
SIVI CONST. LTD. RE L.I.U., L. 183 AND O.P.C.M., L.U. 172.....	609
STANDARD BRANDS LTD. RE I.D.T.W., L. 905 AND GROUP OF EM- PLOYEES.....	653
TILLOSTON PLASTICS INDUSTRIES LTD. RE I.M.A.W. AND GROUP OF EMPLOYEES.....	624
TORONTO TYPOGRAPHICAL U. No. 91 RE THOMAS H. BALDOCK.....	580
ZEHR'S MARKETS LTD. RE DIAMOND 'IZ' ASSOC. AND C.F.A.W. L. U. 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC AND C.F.A.W. L. U. 633, CHARTERED BY THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC AND R.C.I.A.....	635

INDEX OF CASES

ACCREDITATION - PRACTICE - APPOINTMENT OF AN EXAMINER - LIMITS TO TERMS OF REFERENCE DEFINED - WHETHER EXAMINER PERMITTED TO INQUIRE INTO THE ISSUE RELATING TO THE BOARD'S POWER TO ACCREDIT A PART OF A SECTOR.

THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 v. ERECTORS DIVISION, ONTARIO PRECAST CONCRETE MANUFACTURERS' ASSOCIATION v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL.....

577

ADJOURNMENT - FAILURE, UPON DUE NOTICE, OF A PARTY TO ATTEND A BOARD HEARING - WHETHER REQUEST FOR AN ADJOURNMENT WILL BE ACCEDDED TO.

THE UNITED SHOE WORKERS OF AMERICA AFL CIO CLC v. DOMINI SHOE PRODUCTS LIMITED.....

590

ARBITRATION - S37(3) - WHETHER ARBITRATION PROVISION CONTAINED IN A COLLECTIVE AGREEMENT NEGOTIATED BY THE PARTIES IS INADEQUATE - WHETHER THE BOARD WILL MAKE THE APPROPRIATE SUBSTITUTION.

THE GLOBE AND MAIL LIMITED v. THE TORONTO PHOTO-ENGRAVERS' UNION, NO. 35P, L.P.I.U.....

567

BARGAINING RIGHTS - BARGAINING UNIT - EMPLOYEES - CONSTRUCTION INDUSTRY - WHETHER THE EMPLOYEES AFFECTED BY THE APPLICATION ARE CLASSIFIED AS CONSTRUCTION LABOURERS HERETOFORE COVERED BY A SUBSISTING COLLECTIVE AGREEMENT - WHETHER THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS APPROPRIATE - EFFECT OF THE HISTORY OF COLLECTIVE BARGAINING BETWEEN INTERVENER AND RESPONDENT.

LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA v. PIGOTT CONSTRUCTION COMPANY LIMITED v. A PROVINCIAL COUNCIL OF CONSTRUCTION UNIONS.....

565

BARGAINING RIGHTS - EVIDENCE OF MEMBERSHIP - TRADE UNION - SUCCESSOR STATUS - EVIDENCE - WHETHER AN AMALGAMATION OF TRADE UNIONS - EFFECT OF FAILURE TO SATISFY THE ONUS OF PROOF - S12 - S40 - EFFECT OF EMPLOYER CONTINUING TO DEDUCT DUES CHECK-OFF IN ABSENCE OF A COLLECTIVE AGREEMENT - WHETHER EVIDENCE OF MEMBERSHIPS SATISFACTORY.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 v. BARON HOTELS, SUDBURY LIMITED.....

573

BARGAINING RIGHTS - REPRESENTATION VOTE - MEMBERSHIP EVIDENCE - NON-PAY - WHETHER A LOAN WAS GENUINE - WHETHER A TRADE UNION PARTY TO A COLLECTIVE AGREEMENT WITH THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS - BOARD POLICY - WHETHER TO SET ASIDE BARGAINING RIGHTS ONCE GAINED.

CANADIAN UNION OF PUBLIC EMPLOYEES v. ST. THOMAS SANITARY COLLECTIVE SERVICE LIMITED v. GROUP OF EMPLOYEES.....

600

BARGAINING RIGHTS - SALE OF A BUSINESS - S55(1) - WHETHER ALTERATION OF THE PHYSICAL METHOD OF OPERATING A BUSINESS IS A "SALE" - EFFECT ON BARGAINING RIGHTS - S96 - WHETHER MINISTER AUTHORIZED TO APPOINT A CONCILIATION OFFICER.

R. W. S. DELIVERY SERVICES LIMITED v. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA v. SWISS CHALET BAR-B-Q A DIVISION OF HARVEY'S FOODS LIMITED.....

632

BARGAINING RIGHTS - TRADE UNIONS - FUNDAMENTAL DISTINCTION BETWEEN A PARENT TRADE UNION AND A LOCAL AFFILIATE REVIEWED - CONSEQUENCES THAT FLOW THEREFROM IN RELATION TO BARGAINING RIGHTS EXPLAINED - WHETHER THE PARENT HAS FORESAKEN BARGAINING RIGHTS - WHETHER IN THE CIRCUMSTANCES THE INTERESTS OF BOTH PARENT AND THE LOCAL AFFILIATE ARE PRIMA FACIE IN CONFLICT.

H. M. ARNOTT, ET AL. v. LOCAL 1219, CANADIAN UNION OF PUBLIC EMPLOYEES v. CANADIAN UNION OF PUBLIC EMPLOYEES v. THE CORPORATION OF THE TOWN OF MARKHAM.....

616

BARGAINING UNIT - CONSTRUCTION INDUSTRY - S6(1) - DETERMINING THE APPROPRIATE GEOGRAPHIC AREA RELATING TO AN "ALL PILE DRIVER UNIT".

UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 93 v. PETRIFOND FOUNDATION COMPANY LIMITED v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527.....

586

BARGAINING UNIT - EMPLOYEES - CONSTRUCTION INDUSTRY - BARGAINING RIGHTS - WHETHER THE EMPLOYEES AFFECTED BY THE APPLICATION ARE CLASSIFIED AS CONSTRUCTION LABOURERS HERETOFORE COVERED BY A SUBSISTING COLLECTIVE AGREEMENT - WHETHER THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS APPROPRIATE - EFFECT OF THE HISTORY OF COLLECTIVE BARGAINING BETWEEN INTERVENER AND RESPONDENT.

LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA v. PIGOTT CONSTRUCTION COMPANY LIMITED v. A PROVINCIAL COUNCIL OF CONSTRUCTION UNIONS.....

565

BARGAINING UNIT - EMPLOYEES - S1(3)(B) - WHETHER SECRETARY TO CHIEF LIBRARIAN EMPLOYED IN A CONFIDENTIAL CAPACITY - WHETHER ON ALL EMPLOYEE LIBRARY UNIT APPROPRIATE.

CANADIAN UNION OF PUBLIC EMPLOYEES v. THE BOARD OF GOVERNORS RYERSON POLYTECHNICAL INSTITUTE.....

651

BARGAINING UNIT - HOSPITAL UNIT - WHETHER LAY EMPLOYEES EMPLOYED IN THE RESPONDENT'S ADMITTING DEPARTMENT SHARE A COMMUNITY OF INTEREST WITH OFFICE EMPLOYEES - OR WHETHER THESE EMPLOYEES FORM PER SE AN APPROPRIATE TAG-END UNIT.

CANADIAN UNION OF PUBLIC EMPLOYEES v. ST. JOSEPH'S HOSPITAL, HAMILTON v. CSAO NATIONAL (INC.).....

578

BARGAINING UNIT - PRACTICE - PETITION - EFFECT OF APPLICANT'S WITHDRAWING FROM THE PROCEEDING IN CIRCUMSTANCES WHERE BOARD PRACTICE IS TO DISMISS THE APPLICATION - WHETHER PETITION RELEVANT IN THE CIRCUMSTANCES - INTERVENTION BY WAY OF AN APPLICATION FOR CERTIFICATION - BOARD PRACTICE - TO GIVE NOTICE TO EMPLOYEES OF INTERVENER'S APPLICATION AND TO EXTEND THE TERMINAL DATE - S6 - THE APPROPRIATE DRAFTSMEN UNIT - FACTORS THE BOARD CONSIDERS.

INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS - AFL, CIO, CLC v. FPE-PIONEER ELECTRIC LIMITED v. DRAFTSMEN ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A. F. OF L. - C. I. O., C. L. C. v. GROUP OF EMPLOYEES.....

599

BARGAINING UNIT - PROPERTY MANAGEMENT UNDERTAKING - COMPOSITION OF THE UNIT - WHETHER PROPERTY MAINTENANCE STAFF AT CONDOMINIUM PROJECT SHARE A COMMUNITY OF INTEREST WITH THE GENERAL MAINTENANCE STAFF EMPLOYED BY THE RESPONDENT - THE APPROPRIATE GEOGRAPHIC AREA - WHETHER CONFINED TO THE MUNICIPAL ADDRESS OF THE PROJECT.

VII

SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE
S.E.I.U., A.F. OF L., C.I.O., C.L.C. v. DEL ZOTTO PRO-
PERTY MANAGEMENT.....

640

BARGAINING UNIT - PROPERTY MANAGEMENT UNDERTAKING - DETERMIN-
ING THE APPROPRIATE GEOGRAPHIC AREA - GENERAL BOARD POLICY
TO CONFINE AREA TO THE MUNICIPALITY - WHETHER IN THE CIR-
CUMSTANCES THE BOARD IS TO VARY - EFFECT OF THE ABSENCE
OF INTERCHANGE - WHETHER THE UNIT TO BE CONFINED TO THE
PROJECT WHERE APARTMENTS LOCATED.

ONTARIO HOUSING CORPORATION EMPLOYEES LOCAL 767, CANA-
DIAN UNION OF PUBLIC EMPLOYEES v. DEL ZOTTO PROPERTY
MANAGEMENT.....

637

BARGAINING UNIT - REPRESENTATION VOTE - WHETHER "ORDER CLERKS"
SHARE A GREATER COMMUNITY OF INTEREST WITH OFFICE
EMPLOYEES THAN WAREHOUSE EMPLOYEES - WHETHER ELIGIBLE
TO PARTICIPATE IN A VOTE - WHETHER SPEECH DELIVERED BY
THE PRESIDENT OF THE RESPONDENT COMPANY AMOUNTED TO
INTIMIDATION COERCION OR UNDUE INFLUENCE - WHETHER
ADVISABLE TO DIRECT ANOTHER REPRESENTATION VOTE.

RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:
CLC v. BUSH GAMBLE COMPANY LIMITED v. GROUP OF EM-
PLOYEES.....

644

CERTIFICATION - PRACTICE - APPLICATION FOR CERTIFICATION BY
WAY OF INTERVENTION - INITIAL APPLICANT REQUESTS BOARD
WITHDRAW ITS APPLICATION - EFFECT OF BOARD POLICY NOT TO
EXTEND NOTICE OF INTERVENER'S APPLICATION IN THE CIRCUM-
STANCES - WHETHER THE BOARD TO EXTEND THE TERMINAL DATE
- WHETHER BOARD TO GRANT REQUEST TO WITHDRAW.

INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE
WORKERS - AFL, CIO, CLC v. EPE-PIONEER ELECTRIC LIMITED
v. DRAFTSMEN ASSOCIATION OF ONTARIO, LOCAL 164, AMERI-
CAN FEDERATION OF TECHNICAL ENGINEERS, A. F. OF L. -
C. I. O., C. L. C. v. GROUP OF EMPLOYEES.....

652

CONSENT TO PROSECUTE - EVIDENCE - JURISDICTION - S90 - NATURE
OF THE REMEDY - WHETHER A QUASI-CRIMINAL OFFENCE - STAN-
DARD OF PROOF REQUIRED - WHETHER THE STANDARD REQUIRED IN
CIVIL CASES IS APPROPRIATE - FUNCTION OF THE BOARD IS TO
DETERMINE WHETHER GRANTING CONSENT WILL ADVANCE THE PUR-
POSE AND INTENT OF THE ACT.

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO v. T. B.
ABBOT, ET AL.....

575

VIII

CONSENT TO PROSECUTE - S90 - BOARD POLICY - WHETHER THERE ARE
ISSUES OF LAW AND FACT THAT HAVE BEEN RAISED WHICH MIGHT
PROPERLY BE DETERMINED BY A PROVINCIAL JUDGE.

LOCAL UNION 3219 UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA v. THE BOARD OF EDUCATION FOR THE
BOROUGH OF NORTH YORK.....

602

CONSTRUCTION INDUSTRY - BARGAINING RIGHTS - BARGAINING UNIT -
EMPLOYEES - WHETHER THE EMPLOYEES AFFECTED BY THE APPLICA-
TION ARE CLASSIFIED AS CONSTRUCTION LABOURERS HERETOFORE
COVERED BY A SUBSISTING COLLECTIVE AGREEMENT - WHETHER THE
BARGAINING UNIT PROPOSED BY THE APPLICANT IS APPROPRIATE
- EFFECT OF THE HISTORY OF COLLECTIVE BARGAINING BETWEEN
INTERVENER AND RESPONDENT.

LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED
BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA v. PIGOTT
CONSTRUCTION COMPANY LIMITED v. A PROVINCIAL COUNCIL OF
CONSTRUCTION UNIONS.....

565

CONSTRUCTION INDUSTRY - BARGAINING UNIT - S6(1) - DETERMINING
THE APPROPRIATE GEOGRAPHIC AREA RELATING TO AN "ALL PILE
DRIVER UNIT".

UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA,
LOCAL 93 v. PETRIFOND FOUNDATION COMPANY LIMITED v. IN-
TERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v.
LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
527.....

586

CONSTRUCTION INDUSTRY - EMPLOYEES - S1(3)(b) - BOARD POLICY
ON THE EXCLUSION OF NON-WORKING FOREMEN FROM THE APPRO-
PRIATE UNIT EXPRESSED.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v.
NOR-PIPE CONSTRUCTION LIMITED.....

604

CONSTRUCTION INDUSTRY - S106(c) - WHETHER THE RESPONDENT
OPERATES A BUSINESS IN THE CONSTRUCTION INDUSTRY - EFFECT
OF PRINCIPAL BUSINESS BEARING NO RELATIONSHIP TO THE RE-
SPONDENT'S CONSTRUCTION INDUSTRY ACTIVITIES - EFFECT OF
NOT BEING REGULARLY ENGAGED IN CONSTRUCTION INDUSTRY AC-
TIVITY.

UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA
v. KAPUSKASING BOARD OF EDUCATION v. CANADIAN UNION OF
PUBLIC EMPLOYEES.....

587

EMPLOYEE - PETITION - REPRESENTATION VOTE - WHETHER PETITION INITIATED BY A "LEAD HAND" WOULD AFFECT THE TRUE AND VOLUNTARY WISHES OF THE EMPLOYEES AFFECTED - S56 - LETTER EXTENDED TO EMPLOYEES - WHETHER IN EXERCISE OF THE EMPLOYER'S FREEDOM OF SPEECH.

INTERNATIONAL UNION OF DOLL, & TOY WORKERS OF THE U.S.A. & CANADA, LOCAL 905 v. STANDARD BRANDS LIMITED v. GROUP OF EMPLOYEES.....

653

EMPLOYEES - BARGAINING UNIT - S1(3)(B) - WHETHER SECRETARY TO CHIEF LIBRARIAN EMPLOYED IN A CONFIDENTIAL CAPACITY - WHETHER ON ALL EMPLOYEE LIBRARY UNIT APPROPRIATE.

CANADIAN UNION OF PUBLIC EMPLOYEES v. THE BOARD OF GOVERNORS RYERSON POLYTECHNICAL INSTITUTE.....

651

EMPLOYEES - CONSTRUCTION INDUSTRY - BARGAINING RIGHTS - BARGAINING UNIT - WHETHER THE EMPLOYEES AFFECTED BY THE APPLICATION ARE CLASSIFIED AS CONSTRUCTION LABOURERS HERETOFORE COVERED BY A SUBSISTING COLLECTIVE AGREEMENT - WHETHER THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS APPROPRIATE - EFFECT OF THE HISTORY OF COLLECTIVE BARGAINING BETWEEN INTERVENER AND RESPONDENT.

LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA v. PIGOTT CONSTRUCTION COMPANY LIMITED v. A PROVINCIAL COUNCIL OF CONSTRUCTION UNIONS.....

565

EMPLOYEES - CONSTRUCTION INDUSTRY - S1(3)(B) - BOARD POLICY ON THE EXCLUSION OF NON-WORKING FOREMEN FROM THE APPROPRIATE UNIT EXPRESSED.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v. NOR-PIPE CONSTRUCTION LIMITED.....

604

EMPLOYEES - RECONSIDERATION - S1(3)(B) - "SUPERVISORY CHARGE NURSES" - REVIEW OF PRINCIPLES THE BOARD APPLIES - THE RELEVANCE OF THE WORD "SUPERVISORY" IN DESCRIBING DUTIES AND RESPONSIBILITIES ASSESSED - S95(1) - WHETHER THE BOARD SHOULD DETERMINE IF THERE HAS BEEN A SUBSTANTIAL AND MATERIAL CHANGE IN THE DUTIES AND RESPONSIBILITIES OF THE EMPLOYEES CONCERNED SINCE THE DATE OF THE CERTIFICATE GRANTING THE TRADE UNION BARGAINING RIGHTS.

CANADIAN UNION OF PUBLIC EMPLOYEES v. COCHRANE NURSING HOME LIMITED.....

618

EMPLOYEES - S1(3)(B) - WHETHER SUBSTITUTIONAL NATURE OF EMPLOYEE'S MANAGERIAL FUNCTIONS RENDERS HIM MANAGERIAL FOR PURPOSES OF THE ACT - WHETHER BOARD TO INQUIRE INTO ISSUE - EFFECTS OF CHANGES IN THE PERSONS DUTIES AND RESPONSIBILITIES IN CONTEXT OF THE DATE OF THE APPLICATION.

INTERNATIONAL WOODWORKERS OF AMERICA v. LIVINGSTON TRANSPORTATION LIMITED.....

650

EVIDENCE - BARGAINING RIGHTS - EVIDENCE OF MEMBERSHIP - TRADE UNION - SUCCESSOR STATUS - WHETHER AN AMALGAMATION OF TRADE UNIONS - EFFECT OF FAILURE TO SATISFY THE ONUS OF PROOF - S12 - S40 - EFFECT OF EMPLOYER CONTINUING TO DEDUCT DUES CHECK-OFF IN ABSENCE OF A COLLECTIVE AGREEMENT - WHETHER EVIDENCE OF MEMBERSHIPS SATISFACTORY.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 v. BARON HOTELS, SUDBURY LIMITED.....

573

EVIDENCE - JURISDICTION - CONSENT TO PROSECUTE - S90 - NATURE OF THE REMEDY - WHETHER A QUASI-CRIMINAL OFFENCE - STANDARD OF PROOF REQUIRED - WHETHER THE STANDARD REQUIRED IN CIVIL CASES IS APPROPRIATE - FUNCTION OF THE BOARD IS TO DETERMINE WHETHER GRANTING CONSENT WILL ADVANCE THE PURPOSE AND INTENT OF THE ACT.

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO v. T. B. ABBOT, ET AL.....

575

EVIDENCE - JURISDICTION - WHETHER THE BOARD HAS THE JURISDICTION TO ACCEDE TO THE REQUEST OF A PARTY DIRECTING A BANK MANAGER ATTEND A HEARING BEFORE THE EXAMINER - EFFECT OF THE EVIDENCE ACT, R.S.O. 1970, c. 151; THE BANK ACT, R.S.C. 1970, c. B-1; THE EVIDENCE ACT, R.S.C. 1970, c. E-10.

INTERNATIONAL WOODWORKERS OF AMERICA v. LIVINGSTON TRANSPORTATION LIMITED.....

590

EVIDENCE OF MEMBERSHIP - TRADE UNION - SUCCESSOR STATUS - EVIDENCE - BARGAINING RIGHTS - WHETHER AN AMALGAMATION OF TRADE UNIONS - EFFECT OF FAILURE TO SATISFY THE ONUS OF PROOF - S12 - S40 - EFFECT OF EMPLOYER CONTINUING TO DEDUCT DUES CHECK-OFF IN ABSENCE OF A COLLECTIVE AGREEMENT - WHETHER EVIDENCE OF MEMBERSHIPS SATISFACTORY.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 v. BARON HOTELS, SUDBURY LIMITED.....

573

EVIDENCE - S79 - "...ALTERATION OF THE RIGHTS, PRIVILEGES OR DUTY OF..." - S70(2) - WHETHER WAGES ENCOMPASSED BY THE WORD "RIGHTS" - EFFECT OF "WAGES" BEING SPECIFICALLY REFERRED TO IN S70(1) - EFFECT OF THE USE OF THE WORD "THE" IN SUBSECTION (2) AS COMPARED TO THE USE OF "ANY" IN SUBSECTION (1) - WHETHER REFUSAL TO PAY COST OF LIVING ALLOWANCE IN VIOLATION OF SUBSECTION (2) - WHETHER CONTRACT OF EMPLOYMENT PROVIDES FOR SICK PAYMENT - WHETHER EXTRINSIC EVIDENCE ADMISSIBLE.

CSAO NATIONAL (INC.) v. OTTAWA GENERAL HOSPITAL.....

681

JURISDICTION - CONSENT TO PROSECUTE - EVIDENCE - S90 - NATURE OF THE REMEDY - WHETHER A QUASI-CRIMINAL OFFENCE - STANDARD OF PROOF REQUIRED - WHETHER THE STANDARD REQUIRED IN CIVIL CASES IS APPROPRIATE - FUNCTION OF THE BOARD IS TO DETERMINE WHETHER GRANTING CONSENT WILL ADVANCE THE PURPOSE AND INTENT OF THE ACT.

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO v. T. B. ABBOT, ET AL.....

575

JURISDICTION - EVIDENCE - WHETHER THE BOARD HAS THE JURISDICTION TO ACCEDE TO THE REQUEST OF A PARTY DIRECTING A BANK MANAGER ATTEND A HEARING BEFORE THE EXAMINER - EFFECT OF THE EVIDENCE ACT, R.S.O. 1970, c. 151; THE BANK ACT, R.S.C. 1970, c. B-1; THE EVIDENCE ACT, R.S.C. 1970, c. E-10.

INTERNATIONAL WOODWORKERS OF AMERICA v. LIVINGSTON TRANSPORTATION LIMITED.....

590

JURISDICTION - MEMBERSHIP EVIDENCE - CHARGES - S47 OF BOARD'S RULES - WHETHER DUE DILIGENCE EXERCISED IN THE MAKING OF INQUIRIES - WHETHER RELUCTANCE OF EMPLOYEES TO DISCLOSE INFORMATION RELATING TO UNLAWFUL CONDUCT A LEGITIMATE EXCUSE - EFFECT OF HOSTILITY OF EMPLOYEES TOWARDS INTERVENER - WHETHER BOARD HAS JURISDICTION TO CITE FOR CONTEMPT - WHETHER CONTEMPT COMMITTED IN THE BOARD'S PRESENCE - EFFECT OF BOARD DISCRETION IN THE MATTER.

CANADIAN UNION OF CONSTRUCTION WORKERS v. ETOBICOKE FORMING LIMITED v. COUNCIL OF CONCRETE-FORMING TRADE UNIONS v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793.....

664

JURISDICTION DISPUTE - JURISDICTION - WHETHER IN FACT A WORK ASSIGNMENT DISPUTE - EFFECT OF A PARTY COMPLAINANT BEING THE VICTIM OF CONTRACTUAL INCONSISTENCIES OF A GENERAL CONTRACTOR - S81(1) - WHETHER ONE TRADE UNION IS REQUIRING THE EMPLOYER TO MAKE A WORK ASSIGNMENT TO ONE PERSON IN DEFERENCE TO ANOTHER - EFFECT OF ONE PARTY TO THE DISPUTE DISCLAIMING THE WORK IN QUESTION - WHETHER THE BOARD TO ASSERT JURISDICTION.

NORTHDOWN DRYWALL & CONSTRUCTION LIMITED v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18; THE WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 562; ROBERTSON-YATES CORPORATION LIMITED.....

666

JURISDICTIONAL DISPUTE - S81(8) - INTERIM ORDER - EFFECT OF FAILURE TO ALLEGE THAT A STRIKE IS IMMINENT OR IS TAKING PLACE.

RANEY BRADY v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA - LOCAL UNION 38 - AND UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA - ONTARIO PROVINCIAL COUNCIL AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA - LOCAL 837 AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA - ONTARIO PROVINCIAL COUNCIL AND J. DONALD O'SHEA - MISSISSAUGA, ONTARIO.....

649

MEMBERSHIP EVIDENCE - BARGAINING RIGHTS - REPRESENTATION VOTE - NON-PAY - WHETHER A LOAN WAS GENUINE - WHETHER A TRADE UNION PARTY TO A COLLECTIVE AGREEMENT WITH THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS - BOARD POLICY - WHETHER TO SET ASIDE BARGAINING RIGHTS ONCE GAINED.

CANADIAN UNION OF PUBLIC EMPLOYEES v. ST. THOMAS SANITARY COLLECTION SERVICE LIMITED v. GROUP OF EMPLOYEES.....

600

MEMBERSHIP EVIDENCE - COLLECTORS - FAILURE OF RECEIPT PORTION OF CARD TO INDICATE THE PROPER COLLECTOR - FORM 8 - WHETHER DUE INQUIRY MADE - EFFECT ON APPLICANT TRADE UNION'S ORGANIZATIONAL CAMPAIGN.

CANADIAN TEXTILE & CHEMICAL UNION v. PURETEX KNITTING CO. LIMITED.....

676

MEMBERSHIP EVIDENCE - JURISDICTION - CHARGES - S47 OF BOARD'S RULES - WHETHER DUE DILIGENCE EXERCISED IN THE MAKING OF INQUIRIES - WHETHER RELUCTANCE OF EMPLOYEES TO DISCLOSE INFORMATION RELATING TO UNLAWFUL CONDUCT A LEGITIMATE EXCUSE - EFFECT OF HOSTILITY OF EMPLOYEES TOWARDS IN-

XIII

TERVENER - WHETHER BOARD HAS JURISDICTION TO CITE FOR
CONTEMPT - WHETHER CONTEMPT COMMITTED IN THE BOARD'S
PRESENCE - EFFECT OF BOARD DISCRETION IN THE MATTER.

CANADIAN UNION OF CONSTRUCTION WORKERS v. ETOBICOKE FORM-
ING LIMITED v. COUNCIL OF CONCRETE-FORMING TRADE UNIONS
v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL
793.....

664

MEMBERSHIP EVIDENCE - NON-PAY - S1(1)(J) - EFFECT OF FAILURE
OF DOCUMENTS FILED WITH THE BOARD TO DISCLOSE A MONEY
PAYMENT BY THE PERSONS SIGNING THE APPLICATIONS FOR MEM-
BERSHIP.

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL
91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA
v. FRONTENAC BEVERAGES REG'D.....

585

MEMBERSHIP EVIDENCE - NON-PAY - WHETHER CHARGES ARE TIMELY -
NATURE OF BOARD PROCEEDINGS WHEN ALLEGATIONS OF NON-PAY
ARE MADE - ALLEGATION OF IMPROPER CONDUCT BY THE BOARD
- BOARD POLICY GUIDED BY THE BEST INTERESTS OF THE EM-
PLOYEES AFFECTED.

CANADIAN TEXTILE & CHEMICAL UNION v. PURETEX KNITTING
CO. LIMITED.....

611

MEMBERSHIP EVIDENCE - SIMILARITY OF NAMES BETWEEN ONE TRADE
UNION AND THE APPLICANT TRADE UNION - S7(1) - WHETHER
THERE IS A DOUBT IN THE MINDS OF THE APPLICANTS FOR
MEMBERSHIP AS TO THE IDENTITY OF THE ORGANIZATION THEY
ARE JOINING - WHETHER BOARD TO DISMISS THE APPLICATION.

ASSOCIATION OF NURSES ST. JOSEPH'S HOSPITAL, LONDON v.
THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON, IN
ONTARIO.....

661

MEMBERSHIP - TRADE UNION - EVIDENCE - S7 - FORM 8 - THE PRIN-
CIPLE UNDERLYING BOARD PROCEDURE EXPLAINED - EFFECT OF THE
REQUIREMENT FOR SECRECY - S100 - EFFECT OF FAILURE TO
COMPLY WITH DIRECTIONS UNDER FORM 8 - S12 - WHETHER TRADE
UNION HAS MADE THE TRANSITION FROM ONE PROHIBITED BY THE
ACT TO A CERTIFIABLE ORGANIZATION.

DIAMOND "Z" ASSOCIATION v. ZEHR'S MARKETS LIMITED v. CANA-
DIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY
THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH

XIV

AMERICA, AFL-CIO-CLC v. CANADIAN FOOD AND ALLIED WORKERS
LOCAL UNION 633, CHARTERED BY THE AMALGAMATED MEAT CUTTERS
AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC v. RE-
TAIL CLERKS INTERNATIONAL ASSOCIATION.....

635

MEMBERSHIP - TRADE UNION - S1(1)(N) - WHETHER A NON-SHARE
CAPITAL COMPANY INCORPORATED PURSUANT TO THE CANADA
CORPORATIONS ACT R.S.C. 1972 S. 32 A TRADE UNION -
EFFECT OF INCORPORATION UNDER FEDERAL STATUTE ON THE
CAPACITY OF THE ORGANIZATION TO REPRESENT EMPLOYEES
IN THE EMPLOY OF A RESIDENT OF ONTARIO - WHETHER A
MATTER OF BOARD CONCERN - S1(1)(J) - WHETHER "CONDI-
TIONAL MEMBERSHIP" IN THE CIRCUMSTANCES MEETS THE RE-
QUIREMENTS OF THE ACT.

CSAO NATIONAL (INC.) v. OAKVILLE TRAFALGAR MEMORIAL
HOSPITAL ASSOCIATION.....

657

PETITION - BARGAINING UNIT - PRACTICE - EFFECT OF APPLICANT'S
WITHDRAWING FROM THE PROCEEDINGS IN CIRCUMSTANCES WHERE
BOARD PRACTICE IS TO DISMISS THE APPLICATION - WHETHER
PETITION RELEVANT IN THE CIRCUMSTANCES - INTERVENTION
BY WAY OF AN APPLICATION FOR CERTIFICATION - BOARD PRAC-
TICE - TO GIVE NOTICE TO EMPLOYEES OF INTERVENER'S AP-
PLICATION AND TO EXTEND THE TERMINAL DATE - S6 - THE AP-
PROPRIATE DRAFTSMEN UNIT - FACTORS THE BOARD CONSIDERS.

INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS
- AFL, CIO, CLC v. FPE-PIONEER ELECTRIC LIMITED v. DRAFTS-
MENS ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERA-
TION OF TECHNICAL ENGINEERS, A. F. OF L. - C. I. O., C. L.
C. v. GROUP OF EMPLOYEES.....

599

PETITION - CIRCULATION OF STATEMENT OF DESIRE - WHETHER EM-
PLOYEE OBTAINING SIGNATURES DURING "OFF-SHIFT" HOURS
RAISE AN INFERENCE OF MANAGEMENT SUPPORT - WHETHER
EMPLOYEE SUFFICIENTLY SECRETIVE.

INTERNATIONAL MOLDERS & ALLIED WORKERS UNION v. TILLOTSON
PLASTICS INDUSTRIES LIMITED v. GROUP OF EMPLOYEES.....

624

PETITION - REPRESENTATION VOTE - EMPLOYEE - WHETHER PETITION
INITIATED BY A "LEAD HAND" WOULD AFFECT THE TRUE AND
VOLUNTARY WISHES OF THE EMPLOYEES AFFECTED - S56 - LETTER
EXTENDED TO EMPLOYEES - WHETHER IN EXERCISE OF THE EM-
PLOYER'S FREEDOM OF SPEECH.

INTERNATIONAL UNION OF DOLL, & TOY WORKERS OF THE U.S.A.
& CANADA, LOCAL 905 v. STANDARD BRANDS LIMITED v. GROUP
OF EMPLOYEES.....

653

PRACTICE - ACCREDITATION - APPOINTMENT OF AN EXAMINER - LIMITS TO TERMS OF REFERENCE DEFINED - WHETHER EXAMINER PERMITTED TO INQUIRE INTO THE ISSUE RELATING TO THE BOARD'S POWER TO ACCREDIT A PART OF A SECTOR.

THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 v. ERECTORS DIVISION, ONTARIO PRECAST CONCRETE MANUFACTURERS' ASSOCIATION v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL.....

577

PRACTICE - CERTIFICATION - APPLICATION FOR CERTIFICATION BY WAY OF INTERVENTION - INITIAL APPLICANT REQUESTS BOARD WITHDRAW ITS APPLICATION - EFFECT OF BOARD POLICY NOT TO EXTEND NOTICE OF INTERVENER'S APPLICATION IN THE CIRCUMSTANCES - WHETHER THE BOARD TO EXTEND THE TERMINAL DATE - WHETHER BOARD TO GRANT REQUEST TO WITHDRAW.

INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS - AFL, CIO, CLC v. EPE-PIONEER ELECTRIC LIMITED v. DRAFTSMENS ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A. F. OF L. - C. I. O., C. L. C. v. GROUP OF EMPLOYEES.....

652

PRACTICE - EXTENDING THE TERMINAL DATE - CRITERIA THE BOARD APPLIES - WHETHER GOOD AND SUFFICIENT CAUSE IS SHOWN - WHETHER AN EXTENSION OF THE TERMINAL DATE IN CIRCUMSTANCES WHERE IT WILL BE TO THE PREJUDICE OF A PARTY AND WITH THE AIM OF REPAIRING DEFICIENCIES IN A PARTY'S CASE WILL BE PERMITTED.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 v. SIVI CONSTRUCTION LIMITED v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 172.....

609

PRACTICE - PETITION - BARGAINING UNIT - EFFECT OF APPLICANT'S WITHDRAWING FROM THE PROCEEDINGS IN CIRCUMSTANCES WHERE BOARD PRACTICE IS TO DISMISS THE APPLICATION - WHETHER PETITION RELEVANT IN THE CIRCUMSTANCES - INTERVENTION BY WAY OF AN APPLICATION FOR CERTIFICATION - BOARD PRACTICE - TO GIVE NOTICE TO EMPLOYEES OF INTERVENER'S APPLICATION AND TO EXTEND THE TERMINAL DATE - S6 - THE APPROPRIATE DRAFTSMEN UNIT - FACTORS THE BOARD CONSIDERS.

INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS
- AFL, CIO, CLC v. FPE-PIONEER ELECTRIC LIMITED v. DRAFTS-
MENS ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERA-
TION OF TECHNICAL ENGINEERS, A. F. OF L. - C. I. O., C. L.
C. v. GROUP OF EMPLOYEES.....

599

PRACTICE - RECONSIDERATION - REPRESENTATION VOTE - WHETHER
UPON THE EXPIRY OF THIRTY DAYS FROM THE DATE OF THE
DISMISSAL OF AN APPLICATION FOR CERTIFICATION IN CON-
SEQUENCE OF A DEFEATED REPRESENTATION VOTE RENDERS THE
BOARD SEIZED OF THE MATTER FUNCTUS - S95(1) - WHETHER
BOARD WILL ENTERTAIN CHARGES ALLEGING UNLAWFUL CONDUCT
PRIOR TO THE HOLDING OF A REPRESENTATION VOTE - PRAC-
TICE - EFFECT OF NON-COMPLIANCE WITH FORM 43.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL
UNION 120 v. FREEMAN ELECTRIC LIMITED.....

563

PRACTICE - S79 - WHETHER A TRADE UNION DECISION NOT TO GRANT
AN "HONOURABLE WITHDRAWAL CARD" ONCE AN EMPLOYEE MEMBER
IS NO LONGER WITHIN ITS WORK JURISDICTION IS "COERCION"
WITHIN THE MEANING OF S61 OF THE ACT - WHETHER EMPLOYER
PARTY TO THE COLLECTIVE AGREEMENT SHOULD BE MADE A PARTY
TO THE PROCEEDINGS - WHETHER THE EMPLOYER IS AFFECTED BY
THE PROCEEDINGS.

THOMAS H. BALDOCK v. TORONTO TYPOGRAPHICAL UNION NO.
91.....

580

RECONSIDERATION - EMPLOYEES - S1(3)(B) - "SUPERVISORY CHARGE
NURSES" - REVIEW OF PRINCIPLES THE BOARD APPLIES - THE
RELEVANCE OF THE WORD "SUPERVISORY" IN DESCRIBING DUTIES
AND RESPONSIBILITIES ASSESSED - S95(1) - WHETHER THE
BOARD SHOULD DETERMINE IF THERE HAS BEEN A SUBSTANTIAL
AND MATERIAL CHARGE IN THE DUTIES AND RESPONSIBILITIES
OF THE EMPLOYEES CONCERNED SINCE THE DATE OF THE CERTI-
FICATE GRANTING THE TRADE UNION BARGAINING RIGHTS.

CANADIAN UNION OF PUBLIC EMPLOYEES v. COCHRANE NURSING
HOME LIMITED.....

618

RECONSIDERATION - REPRESENTATION VOTE - PRACTICE - WHETHER
UPON THE EXPIRY OF THIRTY DAYS FROM THE DATE OF THE
DISMISSAL OF AN APPLICATION FOR CERTIFICATION IN CON-
SEQUENCE OF A DEFEATED REPRESENTATION VOTE RENDERS THE
BOARD SEIZED OF THE MATTER FUNCTUS - S95(1) - WHETHER
BOARD WILL ENTERTAIN CHARGES ALLEGING UNLAWFUL CONDUCT
PRIOR TO THE HOLDING OF A REPRESENTATION VOTE - PRAC-
TICE - EFFECT OF NON-COMPLIANCE WITH FORM 43.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL
UNION 120 v. FREEMAN ELECTRIC LIMITED..... 563

RELIGIOUS OBJECTION - S39(2)(B) - WHERE APPLICATION IS MADE AT
A TIME WHEN NO COLLECTIVE AGREEMENT IS IN FORCE - POLICY
OF THE ACT - TO PERMIT AT LEAST ONE OPPORTUNITY TO OBTAIN
RELIEF FROM THE COMPULSORY PROVISIONS OF A COLLECTIVE
AGREEMENT ON GROUNDS OF RELIGIOUS OBJECTION - EFFECT OF
MAKING THE TERM OF THE RENEWED COLLECTIVE AGREEMENT RETRO-
ACTIVE.

JOHN VAN BENDEGEM v. INTERNATIONAL WOODWORKERS OF AMERICA
LOCAL UNION 2-353 v. RCA LIMITED..... 570

REPRESENTATION VOTE - BARGAINING UNIT - WHETHER "ORDER CLERKS"
SHARE A GREATER COMMUNITY OF INTEREST WITH OFFICE
EMPLOYEES THAN WAREHOUSE EMPLOYEES - WHETHER ELIGIBLE
TO PARTICIPATE IN A VOTE - WHETHER SPEECH DELIVERED BY
THE PRESIDENT OF THE RESPONDENT COMPANY AMOUNTED TO
INTIMIDATION COERCION OR UNDUE INFLUENCE - WHETHER
ADVISABLE TO DIRECT ANOTHER REPRESENTATION VOTE.

RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:
CLC v. BUSH GAMBLE COMPANY LIMITED v. GROUP OF EM-
PLOYEES..... 644

REPRESENTATION VOTE - EMPLOYEE - PETITION - WHETHER PETITION
INITIATED BY A "LEAD HAND" WOULD AFFECT THE TRUE AND
VOLUNTARY WISHES OF THE EMPLOYEES AFFECTED - S56 - LETTER
EXTENDED TO EMPLOYEES - WHETHER IN EXERCISE OF THE EM-
PLOYER'S FREEDOM OF SPEECH.

INTERNATIONAL UNION OF DOLL, & TOY WORKERS OF THE U.S.A.
& CANADA, LOCAL 905 v. STANDARD BRANDS LIMITED v. GROUP
OF EMPLOYEES..... 653

REPRESENTATION VOTE - MEMBERSHIP EVIDENCE - BARGAINING RIGHTS -
NON-PAY - WHETHER A LOAN WAS GENUINE - WHETHER A TRADE
UNION PARTY TO A COLLECTIVE AGREEMENT WITH THE RESPONDENT
HAS ABANDONED ITS BARGAINING RIGHTS - BOARD POLICY -
WHETHER TO SET ASIDE BARGAINING RIGHTS ONCE GAINED.

CANADIAN UNION OF PUBLIC EMPLOYEES v. ST. THOMAS SANI-
TARY COLLECTIVE SERVICE LIMITED v. GROUP OF EMPLOYEES..... 600

REPRESENTATION VOTE - PRACTICE - RECONSIDERATION - WHETHER UPON THE EXPIRY OF THIRTY DAYS FROM THE DATE OF THE DISMISSAL OF AN APPLICATION FOR CERTIFICATION IN CONSEQUENCE OF A DEFEATED REPRESENTATION VOTE RENDERS THE BOARD SEIZED OF THE MATTER FUNCTUS - S95(1) - WHETHER BOARD WILL ENTERTAIN CHARGES ALLEGING UNLAWFUL CONDUCT PRIOR TO THE HOLDING OF A REPRESENTATION VOTE - PRACTICE - EFFECT OF NON-COMPLAINEE WITH FORM 43.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 120 v. FREEMAN ELECTRIC LIMITED.....

563

REPRESENTATION VOTE - S7(2) - S8(2) - INTERPRETATION - "A REPRESENTATION VOTE BE TAKEN" - WHETHER TO BE READ IN ISOLATION OR IN CONTEXT WITH S92(5)(6) - WHETHER IN THE CIRCUMSTANCES A "RUN OFF" VOTE WILL BE DIRECTED - THE BOARD'S DUTY TO DETERMINE THE TRUE WISHES OF THE EMPLOYEES AFFECTED DISCUSSED.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) v. NORTHERN ELECTRIC COMPANY LIMITED v. CANADIAN UNION OF COMMUNICATION WORKERS v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, (UE).....

626

REPRESENTATION VOTE - S7(4) - CHARGES - S47(1)(3) - REQUEST FOR PARTICULARS - WHETHER PARTICULARS WERE COMPLETE - EFFECT OF A PARTY EXHIBITING CARELESSNESS IN RELATION TO THE FILING OF CHARGES - S47(3) OF THE RULES - WHETHER BOARD TO DISMISS ALLEGATIONS - WHETHER RESPONDENT TAKEN BY SURPRISE - WHETHER AN ADJOURNMENT APPROPRIATE - EFFECT OF FAILURE TO IDENTIFY THE SPECIFIC SECTION ALLEGED TO HAVE BEEN VIOLATED.

INTERNATIONAL WOODWORKERS OF AMERICA v. J. E. MARTEL & SONS LUMBER LIMITED.....

671

REPRESENTATION VOTE - WHETHER A PERSON EMPLOYED IN A CO-OPERATIVE CAPACITY BY THE RESPONDENT AND THE PROVINCE OF ONTARIO IS ELIGIBLE TO PARTICIPATE IN A REPRESENTATION VOTE.

CANADIAN UNION OF PUBLIC EMPLOYEES v. THE PEEL COUNTY BOARD OF EDUCATION v. THE PEEL COUNTY BOARD OF EDUCATION CARETAKERS' ASSOC.....

597

REPRESENTATION VOTE - WHETHER ALL EMPLOYEES ELIGIBLE TO VOTE
 CONFERRED THE OPPORTUNITY TO CAST A BALLOT - EFFECT OF A
 NUMBER OF EMPLOYEES BEING ABSENT FROM WORK DURING THE
 VACATION PERIOD - WHETHER RIGHTS UNDER THE ACT DENIED -
 EFFECT OF TRADE UNION CONSENTING TO DATE OF HOLDING THE
 VOTE.

INTERNATIONAL MOLDERS & ALLIED WORKERS UNION v. GRANDVIEW
 INDUSTRIES LIMITED.....

569

REPRESENTATION VOTE - WHETHER THE TRUE WISHES OF EMPLOYEES
 WAS REFLECTED IN THE CASTING OF THE BALLOTS - EFFECT OF
 PROPAGANDA ENGAGED IN BY RESPONDENT'S FOREMAN IN SUP-
 PORT OF THE TRADE UNION - WHETHER FOREMAN'S SUPPORT
 ENCOURAGED BY THE TRADE UNION OR VOLUNTARILY CONFERRED
 - EFFECT OF KNOWLEDGE OF THE EMPLOYER'S POSITION IN
 ANY EVENT.

INTERNATIONAL WOODWORKERS OF AMERICA v. ATOMIK CONSTRUC-
 TION COMPANY LIMITED.....

605

S79 - DISCHARGE - S58(A) - WHETHER FOR UNION ACTIVITY - EFFECT
 OF EVIDENCE THAT GRIEVORS HAD FORESAKEN THE TRADE UNION -
 WHETHER A REASONABLE EXPLANATION THAT AGGRIEVED NEGATIVELY
 AFFECTED PLANT MORALE - WHETHER OR NOT THE CAUSE FOR THE
 DISCHARGE WAS JUST IS NOT A MATTER IN ISSUE.

UNITED STEELWORKERS OF AMERICA v. SHERMAN SUPERSONIC IN-
 DUSTRIES (CANADA) LIMITED.....

606

S79 - EVIDENCE - "...ALTERATION OF THE RIGHTS, PRIVILEGES OR
 DUTY OF..." - S70(2) - WHETHER WAGES ENCOMPASSED BY THE
 WORD "RIGHTS" - EFFECT OF "WAGES" BEING SPECIFICALLY RE-
 FERRED TO IN S70(1) - EFFECT OF THE USE OF THE WORD "THE"
 IN SUBSECTION (2) AS COMPARED TO THE USE OF "ANY" IN SUB-
 SECTION (1) - WHETHER REFUSAL TO PAY COST OF LIVING ALLOWANCE
 IN VIOLATION OF SUBSECTION (2) - WHETHER CONTRACT OF EM-
 PLOYMENT PROVIDES FOR SICK PAYMENT - WHETHER EXTRINSIC
 EVIDENCE ADMISSIBLE.

CSAO NATIONAL (INC.) v. OTTAWA GENERAL HOSPITAL.....

681

S79 - PRACTICE - WHETHER A TRADE UNION DECISION NOT TO GRANT
 AN "HONOURABLE WITHDRAWAL CARD" ONCE AN EMPLOYEE MEMBER
 IS NO LONGER WITHIN ITS WORK JURISDICTION IS "COERCION"
 WITHIN THE MEANING OF S61 OF THE ACT - WHETHER EMPLOYER

PARTY TO THE COLLECTIVE AGREEMENT SHOULD BE MADE A PARTY TO THE PROCEEDINGS - WHETHER THE EMPLOYER IS AFFECTED BY THE PROCEEDINGS.

THOMAS H. BALDOCK v. TORONTO TYPOGRAPHICAL UNION NO.

91.....

580

S79 - WHETHER AN ALTERATION IN THE RIGHTS PRIVILEGES OR DUTIES OF THE EMPLOYEES AT A TIME PROHIBITED BY THE ACT - S70(2) - BOARD DECISION TO DISMISS AN APPLICATION FOR CERTIFICATION - EFFECT OF THE BOARD ORDER BEING SUB JUDICE - WHETHER AT THE TIME THE ALLEGED VIOLATION OCCURRED THE APPLICATION SHOULD BE TREATED AS DISMISSED - S70(2)(A).

CSAO NATIONAL (INC.) v. OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION.....

630

SALE OF A BUSINESS - BARGAINING RIGHTS - S55(1) - WHETHER ALTERATION OF THE PHYSICAL METHOD OF OPERATING A BUSINESS IS A "SALE" - EFFECT ON BARGAINING RIGHTS - S96 - WHETHER MINISTER AUTHORIZED TO APPOINT A CONCILIATION OFFICER.

R. W. S. DELIVERY SERVICES LIMITED v. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA v. SWISS CHALET BAR-B-Q A DIVISION OF HARVEY'S FOODS LIMITED.....

632

SUCCESSOR STATUS - EVIDENCE - BARGAINING RIGHTS - EVIDENCE OF MEMBERSHIP - TRADE UNION - WHETHER AN AMALGAMATION OF TRADE UNIONS - EFFECT OF FAILURE TO SATISFY THE ONUS OF PROOF - S12 - S40 - EFFECT OF EMPLOYER CONTINUING TO DEDUCT DUES CHECK-OFF IN ABSENCE OF A COLLECTIVE AGREEMENT - WHETHER EVIDENCE OF MEMBERSHIPS SATISFACTORY.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 v. BARON HOTELS, SUDBURY LIMITED.....

573

TRADE UNION - MEMBERSHIP - EVIDENCE - S7 - FORM 8 - THE PRINCIPLE UNDERLYING BOARD PROCEDURE EXPLAINED - EFFECT OF THE REQUIREMENT FOR SECRECY - S100 - EFFECT OF FAILURE TO COMPLY WITH DIRECTIONS UNDER FORM 8 - S12 - WHETHER TRADE UNION HAS MADE THE TRANSITION FROM ONE PROHIBITED BY THE ACT TO A CERTIFIABLE ORGANIZATION.

DIAMOND "Z" ASSOCIATION v. ZEHR'S MARKETS LIMITED v. CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH

AMERICA, AFL-CIO-CLC v. CANADIAN FOOD AND ALLIED WORKERS
LOCAL UNION 633, CHARTERED BY THE AMALGAMATED MEAT CUTTERS
AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC v. RE-
TAIL CLERKS INTERNATIONAL ASSOCIATION.....

635

TRADE UNION - MEMBERSHIP - S1(1)(N) - WHETHER A NON-SHARE
CAPITAL COMPANY INCORPORATED PURSUANT TO THE CANADA
CORPORATIONS ACT R.S.C. 1972 s. 32 A TRADE UNION -
EFFECT OF INCORPORATION UNDER FEDERAL STATUTE ON THE
CAPACITY OF THE ORGANIZATION TO REPRESENT EMPLOYEES
IN THE EMPLOY OF A RESIDENT OF ONTARIO - WHETHER A
MATTER OF BOARD CONCERN - S1(1)(J) - WHETHER "CONDI-
TIONAL MEMBERSHIP" IN THE CIRCUMSTANCES MEETS THE RE-
QUIREMENTS OF THE ACT.

CSAO NATIONAL (INC.) v. OAKVILLE TRAFALGAR MEMORIAL
HOSPITAL ASSOCIATION.....

657

TRADE UNION - SUCCESSOR STATUS - EVIDENCE - BARGAINING RIGHTS -
EVIDENCE OF MEMBERSHIP - WHETHER AN AMALGAMATION OF TRADE
UNIONS - EFFECT OF FAILURE TO SATISFY THE ONUS OF PROOF -
S12 - S40 - EFFECT OF EMPLOYER CONTINUING TO DEDUCT DUES
CHECK-OFF IN ABSENCE OF A COLLECTIVE AGREEMENT - WHETHER
EVIDENCE OF MEMBERSHIPS SATISFACTORY.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL
UNION, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION,
LOCAL 254 v. BARON HOTELS, SUDBURY LIMITED.....

573

TRADE UNIONS - BARGAINING RIGHTS - FUNDAMENTAL DISTINCTION
BETWEEN A PARENT TRADE UNION AND A LOCAL AFFILIATE
REVIEWED - CONSEQUENCES THAT FLOW THEREFROM IN RELATION
TO BARGAINING RIGHTS EXPLAINED - WHETHER THE PARENT HAS
FORESAKEN BARGAINING RIGHTS - WHETHER IN THE CIRCUM-
STANCES THE INTERESTS OF BOTH PARENT AND THE LOCAL
AFFILIATE ARE PRIMA FACIE IN CONFLICT.

H. M. ARNOTT, ET AL. v. LOCAL 1219, CANADIAN UNION OF
PUBLIC EMPLOYEES v. CANADIAN UNION OF PUBLIC EMPLOYEES v.
THE CORPORATION OF THE TOWN OF MARKHAM.....

616

THE REQUISITE NUMBER OF MEMBERS AMONG
THE EMPLOYEES IN THE UNIT AT THE TIME
WHEN THE APPLICATION IS MADE...."

IN MY VIEW THE RESPONDENT IS ONLY USING THE QUESTION OF
BUILD UP AS A TACTIC TO DELAY COLLECTIVE BARGAINING AND THE APPLICANT
SHOULD HAVE BEEN CERTIFIED ON APRIL 25, 1972 IN ACCORDANCE WITH THE
BOARD'S NORMAL PRACTICE.

1550-71-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL
UNION 120 (APPLICANT) V. FREEMAN ELECTRIC LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND
F. W. MURRAY.

DECISION OF THE BOARD: JUNE 1, 1972.

1. IN A DECISION DATED FEBRUARY 15, 1972, THE BOARD DIRECTED
THE TAKING OF A REPRESENTATION VOTE IN THIS MATTER.
2. THE REPRESENTATION VOTE IN THIS MATTER WAS TAKEN ON MARCH
3, 1972. THE LAST DATE FOR FILING A STATEMENT OF OBJECTIONS WITH
RESPECT TO THIS REPRESENTATION VOTE WAS MARCH 9, 1972.
3. FOLLOWING THE TAKING OF THE REPRESENTATION VOTE IN THIS
MATTER, THE BOARD DISMISSED THIS APPLICATION FOR CERTIFICATION ON
MARCH 13, 1972.
4. IN A LETTER RECEIVED BY THE BOARD ON MAY 18, 1972, THE APPLI-
CANT INFORMED THE BOARD THAT IT HAS NOW COME TO THE ATTENTION OF THE
APPLICANT THAT CERTAIN MATTERS OCCURRED PRIOR TO AND AT THE TIME OF THE
VOTE, BY REASON OF WHICH THE APPLICANT REQUESTED THE BOARD TO RECONSIDER
ITS DECISION DISMISSING THE APPLICATION FOR CERTIFICATION.
5. IN THIS LETTER THE APPLICANT FURNISHED THE BOARD WITH PAR-
TICULARS OF THE CONDUCT WHICH IT ALLEGED HAD BEEN COMMITTED BY ONE OF
THE PRINCIPALS OF THE RESPONDENT AND RAISED QUESTIONS REGARDING ONE
UNNAMED INDIVIDUAL WHO, IT IS CLAIMED, DID CAST A BALLOT IN THE REP-
RESENTATION VOTE; AND ONE UNNAMED INDIVIDUAL WHO, IT IS FURTHER
CLAIMED, DID NOT CAST A BALLOT IN THE REPRESENTATION VOTE.
6. THE APPLICANT SUBMITTED THAT THIS ALLEGED CONDUCT MAY WELL
HAVE AFFECTED THE VOTE IN THIS MATTER. THE APPLICANT REQUESTED A
HEARING BEFORE THE BOARD IN ORDER THAT ITS ALLEGATIONS MIGHT BE IN-
VESTIGATED AND THAT THE BOARD MIGHT RECONSIDER ITS DECISION DISMISS-
ING THE APPLICATION.

7. THE RESPONDENT, IN A LETTER TO THE BOARD, IN EFFECT, DENIED THE ALLEGATIONS OF THE APPLICANT AND ADOPTED THE VIEW THAT THE APPLICANT HAD HAD AMPLE TIME TO SUBMIT OBJECTIONS PURSUANT TO SUBSECTION 1 OF SECTION 45 AND SUBSECTION 3 OF SECTION 57 OF THE BOARD'S RULES OF PROCEDURE, FOLLOWING THE TAKING OF THE REPRESENTATION VOTE. THE RESPONDENT POINTED OUT THAT THIRTY DAYS HAD EXPIRED FROM THE DATE OF THE DECISION AND ADDED THAT IN ITS OPINION THE BOARD WAS NOW FUNCTUS AND HAS NO JURISDICTION TO DEAL WITH THE MATTER FURTHER.

8. THE BOARD DOES NOT AGREE WITH THE OPINION OF THE RESPONDENT THAT IT IS FUNCTUS. BY VIRTUE OF SECTION 95(1) OF THE LABOUR RELATIONS ACT, THE BOARD MAY AT ANY TIME, IF IT CONSIDERS IT ADVISABLE TO DO SO, RECONSIDER ITS DECISION.

9. THE APPLICANT HAS NOT ALLEGED THAT IT DID NOT RECEIVE FORM 43, NOTICE OF REPORT OF RETURNING OFFICER, DATED MARCH 3, 1972. IN FORM 43, PARAGRAPHS 2 AND 3 SET FORTH THE PROCEDURE TO BE FOLLOWED IF THE APPLICANT DESIRES TO MAKE REPRESENTATIONS AS TO ANY MATTER RELATING TO THE REPRESENTATION VOTE AND THE TIME LIMITS WITHIN WHICH THE APPLICANT IS REQUIRED TO NOTIFY THE BOARD OF SUCH REPRESENTATIONS. THE DATE SET FORTH IN SAID PARAGRAPH 3 WAS MARCH 9, 1972.

10. IN FORM 43, NOTICE OF REPORT OF RETURNING OFFICER, PARAGRAPH 4 THEREIN READS AS FOLLOWS:

"IF NO STATEMENT OF DESIRE TO MAKE REPRESENTATIONS IS SENT TO THE BOARD IN ACCORDANCE WITH PARAGRAPHS 2 AND 3, THE BOARD MAY DISPOSE OF THE APPLICATION UPON THE MATERIAL BEFORE IT WITHOUT FURTHER NOTICE TO THE PARTIES OR THE EMPLOYEES."

11. AS STATED EARLIER, THE BOARD DISMISSED THIS APPLICATION FOR CERTIFICATION IN A DECISION DATED MARCH 13, 1972. THE APPLICANT DID NOT MAKE ANY REPRESENTATIONS IN CONNECTION WITH THE REPRESENTATION VOTE CONDUCTED IN THIS MATTER UNTIL ITS LETTER REFERRED TO IN PARAGRAPH FOUR HEREIN. THE BOARD NOTES THAT THE APPLICANT HAS OFFERED NO EXPLANATION CONCERNING EITHER WHY IT DID NOT COMPLY WITH THE DIRECTIONS OF FORM 43 OR WHY IT DID NOT PROMPTLY INVESTIGATE THE MATTERS REFERRED TO IN ITS LETTER TO THE BOARD DATED MAY 18, 1972.

12. THE APPLICANT HAS ALLOWED A PERIOD OF APPROXIMATELY TEN WEEKS TO ELAPSE SINCE MARCH 9, 1972, BEFORE REPORTING ITS ALLEGATIONS TO THE BOARD. HAVING REGARD TO THE CIRCUMSTANCES OF THIS APPLICATION AND TO THE PROVISIONS OF SECTIONS 45, 46 AND 47 OF THE BOARD'S RULES OF PROCEDURE, THE REQUESTS OF THE APPLICANT AS SET FORTH IN ITS LETTER TO THE BOARD DATED MAY 18, 1972, ARE DENIED.

1253-71-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. PIGOTT CONSTRUCTION COMPANY LIMITED (RESPONDENT) V. A PROVINCIAL COUNCIL OF CONSTRUCTION UNIONS (INTERVENER).

BEFORE: R. A. FURNESS, VICE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: L. A. MACLEAN, CARL EKHOLM AND LOUIS DULACKA FOR THE APPLICANT; J. C. MURRAY AND J. THOMSON FOR THE RESPONDENT; S. L. ROBINS, Q.C., O. D'AGOSTINI, GEORGE P. ALLEN AND H. A. HERRON FOR THE INTERVENER.

DECISION OF R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBER J. E. C. ROBINSON, Q.C: JUNE 1, 1972.

1. WE FIND THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
2. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES WE FURTHER FIND THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.
3. THE APPLICANT IS SEEKING CERTIFICATION FOR A BARGAINING UNIT OF ALL CRAFTS AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION OTHER THAN CARPENTERS (WHO ARE COVERED BY A COLLECTIVE AGREEMENT NOT MATERIAL TO THIS APPLICATION FOR CERTIFICATION) IN THE DISTRICT OF THUNDER BAY.
4. THE RESPONDENT AND THE INTERVENER HAVE BEEN PARTIES TO A SERIES OF COLLECTIVE AGREEMENTS COMMENCING IN SEPTEMBER OF 1963. THE MOST RECENT COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WAS MADE ON DECEMBER 29, 1970. THIS AGREEMENT IS TO RUN FOR A PERIOD OF ONE YEAR AND THE BARGAINING UNIT IN THIS COLLECTIVE AGREEMENT IS ALL EMPLOYEES OF THE RESPONDENT ENGAGED ON CONSTRUCTION PROJECTS IN THE PROVINCE OF ONTARIO.
5. THE EMPLOYEES OF THE RESPONDENT AT WORK ON THE JOB SITE ON THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION IN THE DISTRICT OF THUNDER BAY WERE (OTHER THAN CARPENTERS) LABOURERS AND SAW OPERATORS. THESE LABOURERS AND SAW OPERATORS WERE ENGAGED IN THE GRUBBING AND CLEARING OF A WORK SITE PREPARATORY TO THE CONSTRUCTION OF A STRUCTURE AT THAT SITE. HAVING REGARD TO THE EVIDENCE BEFORE THE BOARD AND TO THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THE EMPLOYEES (OTHER THAN CARPENTERS) ON THE JOB SITE ON THE DATE OF THE MAKING OF THIS APPLICATION ARE ALL PROPERLY CLASSIFIED AS CONSTRUCTION LABOURERS. WE FURTHER FIND THAT THESE CONSTRUCTION LABOURERS ARE

COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WHICH WAS MADE ON DECEMBER 29, 1970.

6. THE PARTIES TO THIS APPLICATION FOR CERTIFICATION HAVE AGREED THAT THIS APPLICATION FOR CERTIFICATION IS TIMELY. HOWEVER, THERE IS CONSIDERABLE DISAGREEMENT AS TO THE APPROPRIATE BARGAINING UNIT.

7. THE APPLICANT IS SEEKING TO DISPLACE THE INTERVENER AS THE BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT, NAMELY, ALL CONSTRUCTION LABOURERS IN THE DISTRICT OF THUNDER BAY. HOWEVER, THE BARGAINING UNIT IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER MADE ON DECEMBER 29, 1970 COVERS ALL EMPLOYEES ENGAGED ON CONSTRUCTION PROJECTS IN THE PROVINCE OF ONTARIO.

8. WE HAVE CAREFULLY CONSIDERED THE REPRESENTATIONS OF THE PARTIES AND FIND THAT THE COLLECTIVE AGREEMENT MADE ON DECEMBER 29, 1970 IS A VALID COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER AND NOT MERELY AN AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER TO ENTER INTO A SERIES OF COLLECTIVE AGREEMENTS.

9. AS WAS NOTED EARLIER, THE RESPONDENT AND THE INTERVENER HAVE ENJOYED A COLLECTIVE BARGAINING RELATIONSHIP GOING BACK TO SEPTEMBER, 1963. DURING THIS PERIOD OF TIME THE RESPONDENT HAS RECOGNIZED THE INTERVENER AS THE EXCLUSIVE BARGAINING AGENT FOR ALL OF ITS EMPLOYEES ENGAGED ON CONSTRUCTION PROJECTS IN THE PROVINCE OF ONTARIO. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES WE FIND THAT THE UNIT OF EMPLOYEES SUGGESTED BY THE APPLICANT AS BEING APPROPRIATE FOR COLLECTIVE BARGAINING IS, IN FACT, NOT APPROPRIATE FOR COLLECTIVE BARGAINING. WE FIND, IN ALL OF THE CIRCUMSTANCES OF THIS APPLICATION THAT THE BARGAINING UNIT APPROPRIATE FOR COLLECTIVE BARGAINING IS ALL EMPLOYEES OF THE RESPONDENT ENGAGED ON CONSTRUCTION PROJECTS IN THE PROVINCE OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. IN OUR VIEW, THE EXTENSIVE HISTORY OF COLLECTIVE BARGAINING BETWEEN THE RESPONDENT AND THE INTERVENER, COVERING ALL EMPLOYEES OF THE RESPONDENT ENGAGED ON CONSTRUCTION PROJECTS IN THE PROVINCE OF ONTARIO, OUGHT NOT LIGHTLY TO BE DISTURBED UNLESS VERY GOOD CAUSE IS SHOWN. THE APPLICANT HAS NOT SHOWN SUCH CAUSE IN THIS APPLICATION FOR CERTIFICATION.

10. WE ARE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WHICH WE DETERMINE TO BE APPROPRIATE FOR COLLECTIVE BARGAINING, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 30, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH WE DETERMINE, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. IN THE RESULT THE APPLICATION IS DISMISSED.

DECISION OF BOARD MEMBER E. BOYER: JUNE 1, 1972.

1. I DISSENT. THE UNCONTRADICTED EVIDENCE BEFORE THE BOARD ESTABLISHED THAT THE RESPONDENT (PRIOR TO THE PRESENT APPLICATION) HAD NEVER WORKED IN THE DISTRICT OF THUNDER BAY, WHICH IS REGULAR BOARD AREA #22. ACCORDINGLY, IT IS APPARENT THAT THE CONSTRUCTION LABOURERS AFFECTED BY THIS APPLICATION AND, INDEED, ALL OTHER CONSTRUCTION CRAFTS IN THE DISTRICT OF THUNDER BAY, HAVE NEVER HAD AN OPPORTUNITY TO SELECT THE INTERVENER AS THEIR BARGAINING AGENT.

2. IN THESE CIRCUMSTANCES, AND HAVING REGARD TO THE PROVISIONS OF SECTION 3 OF THE LABOUR RELATIONS ACT, THE PRESENT EMPLOYEES HAVE INDICATED THAT THEY HAVE SELECTED THE APPLICANT TO REPRESENT THEM AS THEIR BARGAINING AGENT. THIS IS THE FIRST OPPORTUNITY THAT THESE EMPLOYEES HAVE HAD TO SELECT THEIR BARGAINING AGENT. I WOULD THEREFORE HAVE DIRECTED THE TAKING OF A REPRESENTATION VOTE IN THE BARGAINING UNIT SOUGHT BY THE APPLICANT.

3. WHILE I AM NOT OPPOSED TO THE PRINCIPLE OF PROVINCE-WIDE COLLECTIVE BARGAINING, ONE MUST HAVE REGARD FOR THE RIGHTS AND INTERESTS OF EMPLOYEES IN AREAS OF ONTARIO WHERE THE EMPLOYER HAS NEVER WORKED BEFORE. THIS IS ESPECIALLY TRUE IN THE CIRCUMSTANCES OF THIS APPLICATION.

1909-72-M: THE GLOBE AND MAIL LIMITED (APPLICANT) V. THE TORONTO PHOTO-ENGRAVERS' UNION, No. 35P, L.P.I.U. (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H. ADE AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: W. J. WHITTAKER, Q.C., AND P. L. SCHMIDT FOR THE APPLICANT; NO ONE FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 2, 1972.

1. THE APPLICANT HAS APPLIED PURSUANT TO THE PROVISIONS OF SECTION 37(3) OF THE LABOUR RELATIONS ACT AND HAS REQUESTED THE BOARD TO AMEND THE ARBITRATION PROVISION CONTAINED IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES EFFECTIVE FROM JANUARY 1, 1971 TO DECEMBER 31, 1972.

2. FOR REASONS GIVEN ORALLY AT THE HEARING, THE BOARD FINDS THAT THE ARBITRATION PROVISION CONTAINED IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES IS INADEQUATE AND THE BOARD ACCORDINGLY MODIFIES

THE ARBITRATION PROVISION CONTAINED IN ARTICLE 10 OF THE COLLECTIVE AGREEMENT BY SUBSTITUTING THE FOLLOWING THEREFOR:

ARTICLE 10

A JOINT STANDING COMMITTEE OF TWO REPRESENTATIVES SELECTED BY THE EMPLOYER, AND TWO REPRESENTATIVES SELECTED BY THE UNION SHALL BE CREATED TO WHICH SHALL BE REFERRED FOR ADJUSTMENT OR DECISION ALL MATTERS INVOLVING THE INTERPRETATION, APPLICATION OR ADMINISTRATION OF THIS AGREEMENT AND ANY DISPUTES WHICH CANNOT BE ADJUSTED BY NEGOTIATION. IF THE JOINT STANDING COMMITTEE CANNOT SETTLE BY NEGOTIATION A DIFFERENCE WHICH HAS ARISEN BETWEEN THE PARTIES RELATING TO THE INTERPRETATION, APPLICATION OR ADMINISTRATION OF THIS AGREEMENT, INCLUDING ANY QUESTION AS TO WHETHER A MATTER IS ARBITRABLE, OR WHERE AN ALLEGATION IS MADE THAT THIS AGREEMENT HAS BEEN VIOLATED, EITHER OF THE PARTIES MAY, AFTER EXHAUSTING ANY GRIEVANCE PROCEDURE ESTABLISHED BY THIS AGREEMENT, NOTIFY THE OTHER PARTY IN WRITING OF ITS DESIRE TO SUBMIT THE DIFFERENCE OR ALLEGATION TO ARBITRATION AND THE NOTICE SHALL CONTAIN THE NAME OF THE FIRST PARTY'S APPOINTEE TO AN ARBITRATION BOARD. THE RECIPIENT OF THE NOTICE SHALL WITHIN FIVE DAYS INFORM THE OTHER PARTY OF THE NAME OF ITS APPOINTEE TO THE ARBITRATION BOARD. THE TWO APPOINTEES SO SELECTED SHALL, WITHIN FIVE DAYS OF THE APPOINTMENT OF THE SECOND OF THEM, APPOINT A THIRD PERSON WHO SHALL BE THE CHAIRMAN. IF THE RECIPIENT OF THE NOTICE FAILS TO APPOINT AN ARBITRATOR, OR IF THE TWO APPOINTEES FAIL TO AGREE UPON A CHAIRMAN WITHIN THE TIME LIMITED, THE APPOINTMENT SHALL BE MADE BY THE MINISTER OF LABOUR FOR ONTARIO UPON THE REQUEST OF EITHER PARTY. THE ARBITRATION BOARD SHALL HEAR AND DETERMINE THE DIFFERENCE OR ALLEGATION AND SHALL ISSUE A DECISION AND THE DECISION IS FINAL AND BINDING UPON THE PARTIES AND UPON ANY EMPLOYEE OR EMPLOYER AFFECTED BY IT. THE DECISION OF A MAJORITY IS THE DECISION OF THE ARBITRATION BOARD, BUT IF THERE IS NO MAJORITY THE DECISION OF THE CHAIRMAN GOVERNS. EACH OF THE PARTIES SHALL PAY ONE-HALF THE REMUNERATION AND EXPENSES OF THE CHAIRMAN.

1897-72-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT)
V. GRANDVIEW INDUSTRIES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H. ADE
 AND E. BOYER.

DECISION OF THE BOARD: JUNE 6, 1972.

. . .

2. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS ENGAGED IN A COOPERATIVE PROGRAM BETWEEN THE RESPONDENT AND A UNIVERSITY OR COLLEGE, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

. . .

4. FOLLOWING THE TAKING OF THE REPRESENTATION VOTE THE PARTIES SIGNED A CERTIFICATION OF CONDUCT OF ELECTION AND THEY FURTHER SIGNED AN AGREEMENT WHICH READS IN PART AS FOLLOWS: "WE THE UNDERSIGNED HEREBY CONSENT TO AN IMMEDIATE COUNTING OF THE BALLOTS CAST AT THE REPRESENTATION VOTE DIRECTED BY THE BOARD AND HELD ON THE 24TH DAY OF MAY, 1972... AND WE HEREBY WAIVE ANY OBJECTIONS AS TO THE REGULARITY AND SUFFICIENCY OF THE BALLOTING."

5. THE RESPONDENT BY TELEGRAM TO THE BOARD DATED MAY 25, 1972 STATED AS FOLLOWS:

CERTIFICATION SHOULD NOT ISSUE BASED ON VOTE RESULT YESTERDAY RECOGNIZE NO RECOURSE AVAILABLE REGARDING TWO WHO REFUSED TO VOTE HOWEVER TWO PEOPLE ON VACATION COULD CHANGE RESULT IF GIVEN OPPORTUNITY TO VOTE SUBMIT THIS TO BE DONE AND ISSUANCE OF CERTIFICATE OR DISMISSAL OF APPLICATION TO BE DECIDED THEREAFTER.

6. THE BOARD IS NOT PREPARED TO GIVE EFFECT TO THE OBJECTIONS OF THE RESPONDENT AS SET OUT IN ITS TELEGRAM IN THIS MATTER. WHEN THE PARTIES MAKE THE ARRANGEMENTS AND AGREE TO THE DATE FOR THE TAKING OF A PRE-HEARING REPRESENTATION VOTE, IT IS INCUMBENT UPON THE PARTIES TO TAKE INTO CONSIDERATION THE FACT THAT EMPLOYEES MAY BE ABSENT ON VACATION. IN ADDITION, THERE IS NOTHING TO PREVENT A VACATIONING EMPLOYEE FROM ATTENDING AT THE POLL AND PARTICIPATING IN THE

VOTE. IN ADDITION, THE PARTIES IN THIS CASE HAVE SIGNED THE AGREEMENT REFERRED TO ABOVE WHEREIN THE PARTIES SPECIFICALLY WAIVED ANY OBJECTION AS TO THE REGULARITY AND SUFFICIENCY OF THE BALLOTING IN THIS MATTER. IN VIEW OF THESE CIRCUMSTANCES, THE BOARD IS NOT PREPARED TO NEGATE THE WISHES OF THE EMPLOYEES AS HAVE BEEN DEMONSTRATED IN THE REPRESENTATION VOTE CONDUCTED IN THIS MATTER WHEREIN OF THE EIGHT PERSONS WHO VOTED, FIVE CAST THEIR BALLOT IN FAVOUR OF THE APPLICANT.

7. THE BOARD IS SATISFIED THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

. . .

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

. . .

1892-72-M: JOHN VAN BENDEGEM (APPLICANT) V. INTERNATIONAL WOODWORKERS OF AMERICA LOCAL UNION 2-353 (RESPONDENT TRADE UNION) V. RCA LIMITED (RESPONDENT EMPLOYER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: GERALD VANDEZANDE FOR THE APPLICANT; MARTIN LEVINSON AND N. RUDISI FOR THE RESPONDENT TRADE UNION; NO ONE FOR THE RESPONDENT EMPLOYER.

DECISION OF THE BOARD: JUNE 6, 1972.

1. THE NAME "LOCAL 2-353 OF THE INTERNATIONAL WOODWORKERS OF AMERICA" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT TRADE UNION IS AMENDED TO READ: "INTERNATIONAL WOODWORKERS OF AMERICA LOCAL UNION 2-353".

2. THE NAME "RCA VICTOR COMPANY LTD., CABINET DIVISION" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT EMPLOYER IS AMENDED TO READ: "RCA LIMITED".

3. THIS IS AN APPLICATION PURSUANT TO SECTION 39 OF THE LABOUR RELATIONS ACT WHEREIN THE APPLICANT, BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF, OBJECTS TO JOINING A TRADE UNION AND OBJECTS TO THE PAYING OF DUES OR OTHER ASSESSMENTS TO A TRADE UNION.

4. THE UNION IN THIS MATTER OBJECTED TO THE BOARD'S JURISDIC-

TION TO GRANT THE RELIEF REQUESTED BY THE APPLICANT ON THE GROUNDS THAT THERE WAS NO COLLECTIVE AGREEMENT IN FORCE BETWEEN THE PARTIES ON FEBRUARY 15, 1972 AS REQUIRED BY THE PROVISIONS OF SECTION 39(2) (B) UNDER WHICH THIS APPLICATION WAS MADE. THE FACTS OF THIS CASE MAY BE BRIEFLY SUMMARIZED AS FOLLOWS. THE APPLICANT HAD BEEN EMPLOYED BY THE RESPONDENT EMPLOYER SINCE 1955. THE RESPONDENT UNION WAS CERTIFIED IN 1968 AND HAD ENTERED INTO A COLLECTIVE AGREEMENT WHICH REMAINED IN FORCE FROM FEBRUARY 5, 1969 UNTIL FEBRUARY 4, 1971. FOLLOWING THE NEGOTIATIONS FOR THE RENEWAL OF THE AGREEMENT BETWEEN THE PARTIES A NEW COLLECTIVE AGREEMENT WAS ENTERED INTO AND SIGNED ON FEBRUARY 26, 1971. ARTICLE 23.01 OF THIS AGREEMENT READS AS FOLLOWS:

COMMENCEMENT & DURATION

THIS AGREEMENT SHALL BECOME EFFECTIVE ON FEBRUARY 5TH, 1971 AND SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL FEBRUARY 4TH, 1973.

5. SECTION 39(2)(B) OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

39(2) SUBSECTION 1 APPLIES,

(B) WHERE A COLLECTIVE AGREEMENT IN FORCE BEFORE THE 15TH DAY OF FEBRUARY, 1971 CONTAINS THE PROVISION MENTIONED IN SUBSECTION 1, TO EMPLOYEES IN THE EMPLOY OF THE EMPLOYER ON THE 15TH DAY OF FEBRUARY 1971 AND ONLY DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT, ...

6. THE UNION ARGUED THAT ON FEBRUARY 15, 1971 THERE WAS NO COLLECTIVE AGREEMENT IN FORCE BETWEEN THE PARTIES SINCE THE FIRST COLLECTIVE AGREEMENT BETWEEN THEM HAD EXPIRED ON FEBRUARY 4, 1971 AND THE NEW COLLECTIVE AGREEMENT HAD NOT BEEN SIGNED AND WOULD NOT BE SIGNED UNTIL FEBRUARY 26, 1971. THE APPLICANT ARGUED THAT PURSUANT TO THE PROVISIONS OF ARTICLE 23.01 THE PROVISIONS OF THE COLLECTIVE AGREEMENT WERE MADE RETROACTIVE AND THE AGREEMENT, PURSUANT TO THE PROVISIONS OF ARTICLE 23.01, WAS IN FULL FORCE AND EFFECT FOR THE PERIOD BACK TO FEBRUARY 5, 1971.

7. THE BOARD IN THE VICTORIA HOSPITAL BOARD OF TRUSTEES CASE [1972] OLRB REP. 276 DEALT WITH A SIMILAR PROBLEM. WHILE THE COLLECTIVE AGREEMENT WITH WHICH THE BOARD WAS CONCERNED IN THAT CASE HAD NO GENERAL RETROACTIVE EFFECT, THE BOARD IN ITS REASONS STATED:

10. IT WOULD APPEAR PLAIN FROM A READING OF SECTION 39 OF THE LABOUR RELATIONS ACT THAT IT WAS THE INTENT OF THE LEGISLATURE TO AFFORD THE PERSONS REFERRED TO IN SUBSECTION 39(2)(A) AND (B), AT LEAST ONE OPPORTUNITY TO OBTAIN RELIEF FROM THE COMPULSORY PROVISIONS OF A COLLECTIVE AGREEMENT WHICH OFFENDED THEIR RELIGIOUS BELIEFS AND CONVICTIONS. IN THE CIRCUMSTANCES OF THE PRESENT CASE, IF THE RIGHT INTERPRETATION OF THE WORDS "DURING THE LIFE OF THE AGREEMENT" CONTENDED FOR BY THE UNION IS CORRECT, THE RESULT WOULD BE THAT PERSONS IN THE POSITION OF THE APPLICANT WOULD BE DENIED PERMANENTLY ANY OPPORTUNITY TO TAKE ADVANTAGE OF THE ESCAPE PROVISIONS OF SECTION 39. IN VIEW OF THE GENERAL PURPOSE OF THE SECTION TO GRANT RELIEF, IT IS NECESSARY TO CONSIDER WITH CARE WHETHER THE LEGISLATURE IN USING THE WORDS "DURING THE LIFE OF THE AGREEMENT" INTENDED TO DENY THE RELIEF FOR WHICH THE SECTION IS DESIGNED TO PERSONS CAUGHT IN THE POSITION OF THE APPLICANT.

8. HAVING REGARD TO THE PROVISIONS OF ARTICLE 23.01 OF THE COLLECTIVE AGREEMENT IN THE INSTANT CASE AND FOR THE REASONS GIVEN IN THE VICTORIA HOSPITAL BOARD OF TRUSTEES CASE, WE FIND THAT THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT UNION AND THE RESPONDENT COMPANY IN THE INSTANT CASE WAS, FOR THE PURPOSE OF SECTION 39 OF THE LABOUR RELATIONS ACT, IN FORCE FROM FEBRUARY 5, 1971.

9. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD IS SATISFIED THAT THE APPLICANT IS AN EMPLOYEE OF THE RESPONDENT EMPLOYER WHO, BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF, OBJECTS TO JOINING THE RESPONDENT TRADE UNION AND OBJECTS TO THE PAYING OF UNION DUES OR OTHER ASSESSMENTS TO THE RESPONDENT TRADE UNION.

10. THE BOARD THEREFORE ORDERS AND DIRECTS THAT THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT EMPLOYER AND THE RESPONDENT UNION WHICH ARE OF THE TYPE MENTIONED IN SECTION 38(1)(A) OF THE ACT DO NOT APPLY TO THE APPLICANT AND ACCORDINGLY THE APPLICANT IS NOT REQUIRED TO JOIN THE RESPONDENT UNION, TO BE OR TO CONTINUE TO BE A MEMBER OF THE RESPONDENT UNION OR TO PAY ANY DUES, FEES OR OTHER ASSESSMENTS TO THE RESPONDENT UNION PROVIDED THAT AMOUNTS EQUAL TO ANY INITIATION FEES, DUES OR OTHER ASSESSMENTS ARE PAID BY THE APPLICANT TO OR ARE REMITTED BY THE RESPONDENT EMPLOYER TO A CHARITABLE ORGANIZATION MUTUALLY AGREED UPON BY THE APPLICANT AND THE RESPONDENT TRADE UNION.

11. HOWEVER, IF THE APPLICANT AND THE RESPONDENT TRADE UNION FAIL TO AGREE ON SUCH CHARITABLE ORGANIZATION, THE BOARD, UPON THE REQUEST OF EITHER THE APPLICANT OR THE RESPONDENT UNION, WILL DESIGNATE PURSUANT TO THE PROVISIONS OF SECTION 39(1) OF THE ACT A CHARITABLE ORGANIZATION REGISTERED AS SUCH IN CANADA UNDER PART I OF THE INCOME TAX ACT (CANADA).

1694-71-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) V. BARON HOTELS, SUDBURY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: W. KITCHING AND J. SOBOLEWSKI FOR THE APPLICANT; K. R. VALIN, B. LALONDE AND B. LAMOUREUX FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER J.E.C. ROBINSON, Q.C.: JUNE 6, 1972.

1. THE NAME "BARON HOTELS, SUDBURY LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "BARON HOTELS, SUDBURY LIMITED".

2. THE RESPONDENT IN THIS MATTER PURCHASED THE BUSINESS OF BRULE HOTEL, HAWINDA TAVERNS LIMITED, PENETANGUSHENE ON MARCH 6, 1972.

3. THE APPLICANT APPLIED ON MARCH 6, 1972 TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT. AS EVIDENCE OF MEMBERSHIP THE APPLICANT SUBMITTED SIGNED APPLICATIONS FOR MEMBERSHIP CARDS TOGETHER WITH A RECORD OF DUES DEDUCTIONS MADE BY THE HOTEL BRULE FOR THE MONTH OF FEBRUARY 1972. THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED WERE FORMERLY REPRESENTED BY HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, LOCAL 853. THE LAST AGREEMENT BETWEEN BRULE HOTEL, HAWINDA TAVERNS LIMITED, PENETANGUSHENE, ONTARIO WAS SIGNED ON MAY 4, 1963. IN 1964 STEPS WERE TAKEN TO EFFECT AN AMALGAMATION BETWEEN LOCAL 853 AND LOCAL 254. HOWEVER, WHILE LOCAL 853 CEASED TO REPRESENT THE EMPLOYEES OF THE BRULE HOTEL SHORTLY THEREAFTER, NO COLLECTIVE AGREEMENT WAS EVER ENTERED INTO BETWEEN THE BRULE HOTEL AND LOCAL 254. HOWEVER, IT WOULD APPEAR THAT VERBAL AGREEMENTS WERE MADE BETWEEN THE OWNERS OF THE BRULE HOTEL AND LOCAL 254 AND DUES DEDUCTIONS WERE MADE BY THE OWNERS OF THE BRULE HOTEL AND FORWARDED TO LOCAL 254 UP TO FEBRUARY 1972. WHEN THE RESPONDENT IN THIS MATTER PURCHASED THE BRULE HOTEL FROM THE

PREVIOUS OWNERS ON MARCH 6, 1972, THE RESPONDENT REFUSED TO MAKE ANY FURTHER DUES DEDUCTIONS ON BEHALF OF THE APPLICANT UNION.

4. THIS MATTER CAME ON FOR HEARING IN THE FIRST INSTANCE ON MARCH 30, 1972. HOWEVER, A FURTHER OPPORTUNITY WAS GIVEN TO THE APPLICANT AT A HEARING ON MAY 24, 1972 TO ESTABLISH THAT AN AMALGAMATION OF LOCAL 853 AND LOCAL 254 HAD TAKEN PLACE. THE EVIDENCE FILED IN SUPPORT OF THE AMALGAMATION CONSISTED OF WRITTEN COMMUNICATIONS BETWEEN THE GENERAL PRESIDENT OF THE INTERNATIONAL UNION AND OFFICERS OF LOCAL 853. WHILE THESE COMMUNICATIONS AND INTER-OFFICE MEMOS WOULD APPEAR TO SATISFY THE INTERNAL REQUIREMENTS OF THE UNIONS CONCERNED, THEY FALL SHORT OF ESTABLISHING IN AN OBJECTIVE MANNER THAT AN AMALGAMATION DID TAKE PLACE. THE MINUTE BOOKS OF THE LOCAL UNIONS WERE NOT PRODUCED IN EVIDENCE NOR WAS THERE ANY EVIDENCE AS TO HOW THE MEETINGS OF MEMBERS REFERRED TO IN THE COMMUNICATIONS WERE CALLED. THE LETTERS AT BEST ARE HEARSAY EVIDENCE AND ACCORDINGLY FAIL TO SATISFY US WITH RESPECT TO THE FACTS REFERRED TO THEREIN. WHILE THE MINUTE BOOKS OF THE LOCAL UNIONS MAY WELL ESTABLISH THAT AN AMALGAMATION DID TAKE PLACE, WE CANNOT FIND ON THE TYPE OF EVIDENCE NOW BEFORE US THAT THERE WAS SUCH AN AMALGAMATION. LET IT BE CLEARLY UNDERSTOOD, HOWEVER, THAT WE ARE NOT FINDING THAT THERE WAS NOT AN AMALGAMATION BETWEEN THE TWO LOCAL UNIONS. WE SIMPLY FIND THAT THE APPLICANT HAS FAILED TO MEET THE ONUS ON IT OF ESTABLISHING THAT AN AMALGAMATION DID TAKE PLACE AS ALLEGED.

5. HAD THE APPLICANT ENTERED INTO A COLLECTIVE AGREEMENT WITH THE FORMER OWNERS, THIS WOULD HAVE CONSTITUTED VOLUNTARY RECOGNITION OF THE APPLICANT'S STATUS TO REPRESENT THE EMPLOYEES. HOWEVER, NO SUCH COLLECTIVE AGREEMENT WAS EVER ENTERED INTO SUBSEQUENT TO 1964. ALTHOUGH THE FORMER OWNERS OF THE BRULE HOTEL CONTINUED TO DEDUCT UNION DUES FROM ITS EMPLOYEES, THERE IS NO AUTHORITY UNDER THE ACT FOR SUCH DEDUCTIONS TO BE MADE UNLESS THEY ARE MADE PURSUANT TO THE PROVISIONS OF A COLLECTIVE AGREEMENT. SINCE THERE WAS NO COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE FORMER OWNERS OF THE BRULE HOTEL, THE DEDUCTION OF UNION DUES IN THESE CIRCUMSTANCES WAS CONTRARY TO SECTIONS 12 AND 40 OF THE ACT AND CANNOT BE CONSIDERED TO BE PAYMENTS MADE BY THE EMPLOYEES ON THEIR OWN BEHALF. WE ARE THEREFORE NOT SATISFIED WITH THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT IN THIS CASE.

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DECISION OF BOARD MEMBER O. HODGES: JUNE 6, 1972.

1. I DISSENT.

2. THIS IS AN APPLICATION FOR CERTIFICATION. THE TRADE UNION MEMBERSHIP EVIDENCE CONSISTS OF SIX APPLICATIONS FOR MEMBERSHIP CARDS IN THE NAME OF THE APPLICANT TRADE UNION, AND EVIDENCE OF CHECK-OFF PAYMENTS MADE TO THE SAME TRADE UNION FOR THE THREE MONTHS PRECEDING THE MONTH IN WHICH THE MEMBERSHIP CARDS ARE DATED. THERE ARE SIX PERSONS IN THE APPROPRIATE BARGAINING UNIT.

3. THE ONLY QUESTION TO BE DECIDED IS WHETHER THE EMPLOYEES PAID AN AMOUNT "OF AT LEAST \$1.00 IN RESPECT OF INITIATION FEES OR MONTHLY DUES OF THE TRADE UNION". THAT AT LEAST THIS AMOUNT WAS PAID BY DUES DEDUCTION IS CLEAR. THAT IT WAS DEDUCTED UNDER AN AGREED ARRANGEMENT BY THE SAME TRADE UNION WITH THE PREVIOUS OWNER OF THE BUSINESS MAKES NO DIFFERENCE.

4. NOT ONE OF THE EMPLOYEES OBJECTED TO THE APPLICATION FOR CERTIFICATION. THE INVITATION TO OBJECT WAS EXTENDED BY THE POSTING OF FORM 5 SECTIONS 5 AND 6, AS IT IS IN ALL CERTIFICATION CASES. CLEARLY, THE EMPLOYEES UNANIMOUSLY WISH TO CONTINUE TO BE REPRESENTED BY THE APPLICANT TRADE UNION.

5. I FIND THE MEMBERSHIP EVIDENCE ADEQUATE TO MEET THE REQUIREMENTS OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT, AND I FURTHER FIND THAT THE APPLICANT UNION IS ENTITLED TO OUTRIGHT CERTIFICATION.

1850-72-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT)
V. T. B. ABBOT, ET AL. (RESPONDENTS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: B. STEWART, R. A. ABBOTT, R. J. BELTON AND R. D. ELLIS FOR THE APPLICANT; T. E. ARMSTRONG, W. VINCER AND B. MURRAY FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER H. ADE:
JUNE 6, 1972.

1. THE APPLICANT HAS APPLIED FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENTS AND HAS ALLEGED THAT THE RESPONDENTS HAVE ENGAGED IN AN UNLAWFUL STRIKE AGAINST THE APPLICANT CONTRARY TO SECTION 63 OF THE LABOUR RELATIONS ACT.

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3. AT THE HEARING IN THIS MATTER COUNSEL FOR THE RESPONDENTS ARGUED THAT THE ONUS IN AN APPLICATION FOR CONSENT TO INSTITUTE A

PROSECUTION WAS THE "CRIMINAL ONUS" BECAUSE OF THE "QUASI-CRIMINAL" NATURE OF THE MATTER AND IN SUPPORT OF THE ARGUMENT, COUNSEL RELIED UPON THE DECISION OF THE BOARD IN THE A. L. WATSON LIMITED CASE, OLRB MONTHLY REPORT, SEPTEMBER 1965, P. 436.

4. THE BOARD'S JURISDICTION IN THESE MATTERS IS FOUND IN THE LABOUR RELATIONS ACT. THE BOARD HAS NO JURISDICTION IN CRIMINAL MATTERS WHATSOEVER. THE NATURE OF ANY PROCEEDING BEFORE THE BOARD, INCLUDING APPLICATIONS FOR CONSENT TO INSTITUTE A PROSECUTION, IS NOT CRIMINAL NOR CAN IT PROPERLY BE CHARACTERIZED AS QUASI-CRIMINAL. WHILE THE BOARD HAS THE NECESSARY JURISDICTION TO GRANT SUCH CONSENTS, IT DOES NOT DEAL WITH THE SUBJECT-MATTER OF THE APPLICATION FROM THE POINT OF VIEW OF CRIMINAL LAW. THE BOARD DOES NOT FUNCTION AS AN ADJUNCT OF PROVINCIAL JUDGES OR CRIMINAL COURTS NOR DOES IT EXERCISE ITS JURISDICTION FOR THE PURPOSE OF ACTING AS A SCREENING PANEL TO CONTROL THE AMOUNT OF WORK TO BE PERFORMED BY PROVINCIAL JUDGES.

5. THE BOARD'S SOLE FUNCTION IN APPLICATIONS FOR CONSENT TO INSTITUTE A PROSECUTION IS TO DETERMINE WHETHER, BY GRANTING ITS CONSENT, IT WILL ADVANCE THE PURPOSE AND INTENT OF THE ACT AND THEREBY PROMOTE A SOUND RELATIONSHIP BETWEEN THE PARTIES. THE MATTERS WHICH ARE THE PROPER CONCERN OF THE BOARD AND OVER WHICH THE BOARD EXERCISES ITS JURISDICTION ARE CIVIL MATTERS AND ARE EXERCISED FOR CIVIL PURPOSES, ALBEIT PRELIMINARY TO PROCEEDINGS WHICH ARE QUASI-CRIMINAL IN NATURE. ACCORDINGLY, THE ONUS OF PROOF APPLICABLE IN ALL MATTERS BEFORE THE BOARD IS THE ONUS APPLIED IN CIVIL CASES. ALTHOUGH IT WOULD APPEAR FROM THE RESPONDENT'S ARGUMENT IN THIS CASE THAT THE LANGUAGE ADOPTED BY THE BOARD IN THE A. L. WATSON LIMITED CASE LED THE RESPONDENT TO BELIEVE THAT THE BOARD HAS APPLIED THE CRIMINAL ONUS OF PROOF IN THESE MATTERS, IT SHOULD BE POINTED OUT THAT THE BOARD IN RECENT YEARS HAS REGULARLY APPLIED THE CIVIL ONUS OF PROOF FOR THE REASONS SET OUT ABOVE.

6. IN THE EXERCISE OF ITS JURISDICTION IN APPLICATIONS FOR CONSENT TO INSTITUTE A PROSECUTION, THE BOARD HAS VERY BROAD DISCRETIONARY POWERS WHICH MUST BE JUDICIOUSLY EXERCISED. ALL THE FACTS OF EACH CASE, WHEN CONSIDERED IN LIGHT OF THE BOARD'S FUNCTIONS AS DESCRIBED ABOVE, WILL DETERMINE HOW THE BOARD'S DISCRETION WILL BE EXERCISED.

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DECISION OF BOARD MEMBER E. BOYER: JUNE 6, 1972.

I DISSENT.

IN MY VIEW, THE GRANTING OF CONSENT ON THE FACTS OF THIS CASE WILL NOT ADVANCE THE PURPOSE AND INTENT OF THE LABOUR RELATIONS ACT NOR WILL IT PROMOTE A BETTER RELATIONSHIP BETWEEN THE PARTIES.

992-71-R: THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (RESPONDENT) V. ERECTORS DIVISION, ONTARIO PRECAST CONCRETE MANUFACTURERS' ASSOCIATION (INTERVENER #1) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL (INTERVENER #2).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: B.W. BINNING, S. BERNARDO AND G.A. BECIGNEUL FOR THE APPLICANT; R. KOSKIE, A.M. MINSKY, R. FORD AND G. CRAGG FOR THE RESPONDENT; R.V. BRADLEY AND W.J. HEMMERICK FOR INTERVENER #1; R. KOSKIE, A.M. MINSKY, R. FORD AND G. CRAGG FOR INTERVENER #2; M. SACK FOR THE TORONTO FORMWORK ASSOCIATION; STANLEY H. NEWMAN FOR FAGA CONSTRUCTION COMPANY; M. SACK FOR TONEL MASONRY LIMITED, BIDDOLL CONSTRUCTION, DUROMA OF CANADA LTD., DILINI CONST. LTD., LEADER MASONRY & FORMING LTD., UNIFORM STRUCTURES (1969) LTD. AND DIRECT FORMING; R.D. PERKINS FOR NORTHDOWN DRYWALL & CONSTRUCTION LIMITED, CESARONI BROS., DONALDSON-BARRON LTD., LONG BRANCH WINDOW & METAL CLEANING LIMITED, AND MAREL CONTRACTORS; J.B. NOONAN FOR CELAMOR FORMING COMPANY, MUTAMP INVESTMENTS LIMITED AND BEMAC PROTECTIVE COATINGS LIMITED; MAL NICHOLSON FOR MAL NICHOLSON LIMITED; G.A. PICKELL FOR ONTARIO HYDRO; B.W. BINNING FOR WHITNEY CONSTRUCTION LTD.; DOUGLAS W. GILMOUR, Q.C. FOR THE BOARD OF EDUCATION FOR THE CITY OF TORONTO.

DECISION OF THE BOARD: JUNE 7, 1972.

1. AT THE HEARING IN THIS APPLICATION FOR ACCREDITATION ON MAY 8, 1972, THE PARTIES AGREED THAT QUESTIONS CONCERNING THE DESCRIPTION OF THE APPROPRIATE UNIT OF EMPLOYERS AND THE LISTS OF EMPLOYERS FILED SHOULD BE REFERRED TO AN EXAMINER. THE BOARD INDICATED THAT IT WAS PREPARED TO ADOPT THIS PROCEDURE ON THE UNDERSTANDING THAT THE QUESTION OF THE BOARD'S POWER TO ACCREDIT FOR PART OF A SECTOR WOULD NOT BE A MATTER BEFORE THE EXAMINER.

2. ACCORDINGLY, MR. J.H. HENDERSON, EXAMINER, IS AUTHORIZED TO CONFER WITH THE PARTIES AND TO REPORT TO THE BOARD ON THE FOLLOWING MATTERS:

- (A) THE DESCRIPTION OF THE UNIT OF EMPLOYERS;
- (B) THE COMPOSITION OF SCHEDULES "E", "F" AND "G", HAVING REGARD TO ANY AGREEMENT REACHED BY THE PARTIES ON THE DESCRIPTION OF THE UNIT OF EMPLOYERS;

- (c) THE COMPOSITION OF SUCH SCHEDULES IN THE EVENT THAT THE PARTIES ARE NOT ABLE TO AGREE ON THE DESCRIPTION OF THIS UNIT OF EMPLOYERS;
- (d) SUCH OTHER MATTERS THAT MAY ARISE DURING THE EXAMINER'S MEETINGS, CONCERNING THE DESCRIPTION OF THE UNIT OR THE COMPOSITION OF THE SCHEDULES.

3. MR. J.H. HENDERSON, EXAMINER, IS FURTHER AUTHORIZED TO CONFER WITH THE PARTIES AND TO REPORT TO THE BOARD ON:

- (a) THE EFFECT OF THE PHRASE "EMPLOYERS OF EMPLOYEES EMPLOYED THROUGHOUT THE PROVINCE OF ONTARIO" AS PROPOSED BY THE PARTIES, ON THE COMPOSITION OF THE EMPLOYERS IN THE UNIT OF EMPLOYERS;
- (b) THE PARTIES TO, AND THE BARGAINING RIGHTS, INCLUDING GEOGRAPHIC AREA, CONFERRED BY, COLLECTIVE AGREEMENTS RELIED ON BY THE PARTIES IN SUPPORT OF THEIR PROPOSED EXCLUSIONS FROM THE UNIT OF EMPLOYERS;
- (c) THE EMPLOYERS, COVERED BY THE AGREEMENTS, REFERRED TO IN CLAUSE (B) OF THIS PARAGRAPH, THAT WOULD BE EXCLUDED FROM SCHEDULES "E", "F" AND "G", IF THE PARTIES PROPOSED EXCLUSIONS FROM THE UNIT OF EMPLOYERS ARE ACCEPTED BY THE BOARD; AND
- (d) ALL OTHER OUTSTANDING MATTERS CONCERNING SCHEDULES "E", "F", "G" AND "H".

1347-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ST. JOSEPH'S HOSPITAL, HAMILTON (RESPONDENT) V. CSAO NATIONAL (INC.) (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS A. MAIN AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: J. BEATTIE AND MISS V. PAIGE FOR THE APPLICANT; J. V. CUFF, J. C. CHALKLIN AND D. VICE FOR THE RESPONDENT; NO ONE FOR THE INTERVENER.

DECISION OF THE BOARD:

JUNE 7, 1972.

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2. THE APPLICANT IS APPLYING TO THE BOARD FOR CERTIFICATION FOR A UNIT COMPOSED OF ALL LAY EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS ADMITTING DEPARTMENT AT HAMILTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, REGISTERED NURSES AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 786.

3. THE CURRENT COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 786 WHICH IS EFFECTIVE FROM DECEMBER 1, 1970 TO JULY 14, 1972 COVERS ALL THE LAY EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHIEF ENGINEER, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK.

4. THE RESPONDENT SUBMITS THAT PERSONS EMPLOYED IN ITS ADMITTING DEPARTMENTS HAVE A COMMUNITY OF INTEREST WITH AND FORM A PART OF THE RESPONDENT'S OFFICE STAFF. IT WAS NOT DISPUTED THAT THE EMPLOYEES IN THE RESPONDENT'S ADMITTING DEPARTMENTS HAVE NEVER BEEN REPRESENTED BY THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 786 UNDER THE ABOVE DESCRIBED BARGAINING UNIT. THE APPLICANT SUBMITS THAT HAVING REGARD TO THE DUTIES PERFORMED BY THE EMPLOYEES OF THE RESPONDENT IN ITS ADMITTING DEPARTMENT THESE EMPLOYEES HAVE A COMMUNITY OF INTEREST WITH EMPLOYEES PERFORMING NURSING CARE AND THAT ACCORDINGLY THEY ARE IN APPROPRIATE TAG-END UNIT TO THE BARGAINING UNIT ALREADY REPRESENTED BY THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 786.

5. WE WOULD MENTION THAT THE NURSES' ASSOCIATION, ST. JOSEPH'S HOSPITAL, HAMILTON HOLDS THE BARGAINING RIGHTS FOR ALL LAY REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT ENGAGED IN NURSING CARE, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK. THE MOST RECENT COLLECTIVE AGREEMENT BETWEEN THE NURSES' ASSOCIATION AND THE RESPONDENT EXPIRED ON MARCH 10, 1972.

6. IN LIGHT OF THE ABOVE SUBMISSIONS MADE BY THE APPLICANT AND THE RESPONDENT, THE BOARD APPOINTED MR. J. A. MACDONALD TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF THE EMPLOYEES OF THE RESPONDENT IN ITS ADMITTING DEPARTMENT.

7. THE BOARD HAS CONSIDERED THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED APRIL 11, 1972 AND HAS ALSO ENTERTAINED BOTH WRITTEN AND ORAL SUBMISSIONS MADE BY THE PARTIES.

8. ON THE BASIS OF THE EVIDENCE CONTAINED IN THE REPORT OF THE

EXAMINER AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS ADMITTING DEPARTMENT PERFORM DUTIES AND RESPONSIBILITIES WHICH ARE LARGELY CLERICAL IN NATURE AND THAT THE SAID EMPLOYEES DO NOT HAVE A COMMUNITY OF INTEREST WITH THE NURSING STAFF. RATHER, THE BOARD FINDS THAT THE COMMUNITY OF INTEREST OF THE ADMITTING DEPARTMENT PERSONNEL IS WITH THE OFFICE EMPLOYEES OF THE RESPONDENT AND THAT, IN FACT, THE EMPLOYEES OF THE RESPONDENT IN ITS ADMITTING DEPARTMENT ARE MEMBERS OF THE RESPONDENT'S OFFICE STAFF.

9. THE BOARD THEREFORE FINDS THAT THE UNIT OF EMPLOYEES OF THE RESPONDENT FOR WHICH THE APPLICANT HAS APPLIED FOR CERTIFICATION IS NOT AN APPROPRIATE UNIT OF EMPLOYEES FOR COLLECTIVE BARGAINING.

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1760-71-U: THOMAS H. BALDOCK (COMPLAINANT) V. TORONTO TYPOGRAPHICAL UNION NO. 91 (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: THOMAS H. BALDOCK FOR THE COMPLAINANT; J. A. RYDER AND BALFOUR MACKENZIE FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER J. D. BELL: JUNE 7, 1972.

1. THE NAME "TORONTO TYPOGRAPHICAL UNION - BALFOUR MACKENZIE (PRESIDENT)" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "TORONTO TYPOGRAPHICAL UNION No. 91".

2. THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 79 OF THE LABOUR RELATIONS ACT WHEREIN THE COMPLAINANT SEEKS RELIEF UNDER SECTION 61 OF THE ACT BECAUSE OF THE RESPONDENT'S FAILURE TO PROVIDE THE COMPLAINANT WITH AN "HONOURABLE WITHDRAWAL CARD" AND THE COMPLAINANT ALSO SEEKS A REFUND OF ALL DUES PAID BY HIM SINCE MARCH 23, 1970.

3. AT THE HEARING IN THIS MATTER, THE BOARD WAS REFERRED TO THE RESPONDENT UNION'S BOOK OF LAWS (CONSTITUTION), THE RELEVANT PORTIONS OF WHICH READ AS FOLLOWS:

ARTICLE V - CHARGES, TRIALS AND APPEALS

SEC. 43. IN NO CASE SHALL A MEMBER APPEAL TO A CIVIL COURT OR ANY OTHER AGENCY FOR REDRESS FROM

AN ACTION BY THE UNION UNTIL HE HAS EXHAUSTED HIS RIGHTS OF APPEAL UNDER THE LAWS OF THE INTERNATIONAL UNION. ANY MEMBER WHO VIOLATES THIS SECTION SHALL BE LIABLE TO SUMMARY EXPULSION BY THE EXECUTIVE COUNCIL.

ARTICLE XIV - HONORABLE WITHDRAWAL CARDS

SECTION 1. MEMBERS IN GOOD STANDING WHO CEASE TO PERFORM WORK THAT IS WITHIN THE JURISDICTION OF THE UNION SHALL BE ENTITLED TO THE WITHDRAWAL CARD ISSUED BY THIS UNION, WHICH EXEMPTS THEM FROM THE PAYMENT OF ALL DUES, AND DEPRIVES THEM OF ALL OFFICES AND BENEFITS WHATSOEVER. ...

4. THE PARTIES FURTHER AGREED THAT THE RESPONDENT UNION IS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF MONO LINO TYPESETTING Co. LIMITED. THE SAID AGREEMENT WHICH WAS SIGNED ON APRIL 8, 1970 PROVIDES IN PART:

UNION MEMBERSHIP

3. THE EMPLOYER AGREES TO EMPLOY ONLY MEMBERS OF THE UNION IN GOOD STANDING AND SUCH APPRENTICES AS ARE PROVIDED FOR HEREIN TO PERFORM ALL WORK WITHIN THE JURISDICTION OF THE UNION. THE FOREMAN SHALL BE A JOURNEYMAN MEMBER OF THE UNION IN GOOD STANDING, IT BEING UNDERSTOOD THAT FOREMEN ARE CONSIDERED REPRESENTATIVES OF MANAGEMENT.

JURISDICTION

6. JURISDICTION OF THE UNION AND THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING IS DEFINED AS INCLUDING ALL COMPOSING ROOM WORK AND INCLUDES CLASSIFICATIONS SUCH AS:

(THERE FOLLOWS A LONG LIST OF CLASSIFICATIONS WHICH DOES NOT INCLUDE THE POSITION OF CUSTOMER CONTACT MAN)

5. THE COMPLAINANT COMMENCED HIS EMPLOYMENT WITH MONO LINO TYPESETTING Co. LIMITED AS A COMPOSITOR AND WAS SUBSEQUENTLY APPOINTED ASSISTANT FOREMAN. AS AN ASSISTANT FOREMAN HE WAS COVERED BY THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES. SUBSEQUENTLY, THE COMPLAINANT WAS PROMOTED TO THE POSITION OF CUSTOMER CONTACT MAN. IN 1970 THE COMPLAINANT APPLIED FOR AN HONOURABLE WITHDRAWAL CARD AND

ON NOVEMBER 17, 1970 HE WAS ADVISED THAT THE EXECUTIVE COMMITTEE OF THE UNION WOULD RECOMMEND TO THE UNION AT ITS REGULAR MEETING ON NOVEMBER 29, 1970 THAT HIS APPLICATION FOR AN HONOURABLE WITHDRAWAL CARD BE DENIED.

6. ON DECEMBER 1, 1970 THE UNION WROTE TO THE COMPLAINANT AND STATED IN PART AS FOLLOWS: "THIS IS TO OFFICIALLY INFORM YOU THAT TORONTO UNION No. 91, MEETING IN REGULAR SESSION ON NOVEMBER 29, 1970, DENIED YOUR APPLICATION FOR AN HONOURABLE WITHDRAWAL CARD..." THE COMPLAINANT WAS FURTHER ADVISED THAT HE HAD A RIGHT TO APPEAL AND A COPY OF THE APPEAL PROCEDURES WAS FORWARDED TO THE COMPLAINANT.

7. THE COMPLAINANT RENEWED HIS APPLICATION FOR AN HONOURABLE WITHDRAWAL CARD ON AUGUST 12, 1971 AND STATED AS FOLLOWS:

I AM PRESENTLY EMPLOYED BY MONO LINO AS A CONTACT MAN AND I INTEND TO REMAIN IN THIS POSITION IN THE FORESEEABLE FUTURE. AS STATED IN THE "AGREEMENT" PAGES 4-5 THIS JOB IS CLEARLY NOT UNDER UNION JURISDICTION. FURTHER EVIDENCE IS THAT 50% OF THE PRESENT CONTACT STAFF AT MONO LINO IS NON-UNION AND THE EMPLOYER HAS RIGHTLY REFUSED TO PAY FOR THE I.T.U. NEGOTIATED PENSION IN NON-UNION AREAS.

I HOPE YOU WILL GIVE DUE CONSIDERATION TO THESE FACTS AS I HEREBY MAKE APPLICATION FOR AN HONORABLE WITHDRAWAL CARD.

8. THE COMPLAINANT'S REQUEST WAS AGAIN REJECTED BY THE UNION ON AUGUST 25, 1971 AND FURTHER CORRESPONDENCE FOLLOWED BETWEEN THE PRESIDENT OF THE RESPONDENT UNION AND THE COMPLAINANT WHEREIN THEY DEBATED THE MERITS OF THEIR POSITIONS. THE COMPLAINANT TESTIFIED THAT ALTHOUGH HE HAS CONTINUED TO PAY DUES HE WAS NOT COVERED BY THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE UNION AND HIS EMPLOYER NOR DID THE EMPLOYER CONTRIBUTE ANYTHING ON HIS BEHALF TOWARDS THE PENSION FUND THAT WAS ESTABLISHED UNDER THE COLLECTIVE AGREEMENT. THIS MATTER WAS BROUGHT TO THE ATTENTION OF THE UNION BUT NO ACTION WAS TAKEN BY THE UNION ON HIS BEHALF. THE PARTIES AGREED THAT TWO OTHER CUSTOMER CONTACT MEN EMPLOYED BY MONO LINO HAD CANCELLED THEIR UNION MEMBERSHIP WHEN THEIR REQUEST FOR AN HONOURABLE WITHDRAWAL CARD WAS REFUSED AND ALTHOUGH THE UNION INDICATED ITS OPPOSITION TO THEIR TERMINATING THEIR MEMBERSHIP BY PICKETING THE EMPLOYER'S PREMISES, THE UNION TOOK NO STEPS TO ENFORCE THE PROVISIONS OF THE COLLECTIVE AGREEMENT WHICH REQUIRED COMPULSORY MEMBERSHIP FOR ALL EMPLOYEES PERFORMING WORK WITHIN THE JURISDICTION OF THE UNION. COUNSEL FOR THE RESPONDENT UNDERTOOK THAT THE COMPLAINANT WOULD BE PERMITTED TO RESIGN FROM THE

UNION IN THE SAME MANNER AS THE OTHER TWO CUSTOMER CONTACT MEN AND THAT THE RESPONDENT WOULD NOT INTERFERE WITH HIS EMPLOYMENT.

9. THE COMPLAINANT POINTED OUT THAT HE WANTED AN HONOURABLE WITHDRAWAL CARD SO THAT NOT ONLY WOULD HIS DUES PAYMENTS CEASE BUT ALSO IN THE EVENT THAT HE WAS OBLIGED TO PERFORM BARGAINING UNIT WORK IN THE FUTURE IT WOULD FACILITATE HIS RE-ENTRY INTO THE UNION.

10. MR. MACKENZIE, THE PRESIDENT OF THE UNION, TESTIFIED ON BEHALF OF THE UNION THAT CUSTOMER CONTACT MEN DID NOT PERFORM FUNCTIONS DESCRIBED IN ITEM 6 OF THE COLLECTIVE AGREEMENT AND HE FURTHER STATED THAT WHEN PERSONS BECOME CUSTOMER CONTACT MEN "THEY CEASED WORKING IN THE COMPOSING ROOM".

11. IT WAS ARGUED ON BEHALF OF THE RESPONDENT THAT THE UNION'S REFUSAL TO PROVIDE AN HONOURABLE WITHDRAWAL CARD IN NO WAY AFFECTED THE EMPLOYMENT RELATIONSHIP WITH THE COMPLAINANT'S EMPLOYER. IN ADDITION, IT WAS ARGUED THAT THE COMPLAINANT SHOULD BE COMPELLED TO FOLLOW THE UNION'S APPEAL PROCEDURE BEFORE HE IS ENTITLED TO SEEK ANY RELIEF UNDER THIS ACT AND THE BOARD WAS REFERRED TO ARTICLE V, SECTION 43 OF THE UNION'S BOOK OF LAWS REFERRED TO ABOVE. THE UNION ALSO ARGUED THAT THE BOARD SHOULD NOT INTERPRET THE COLLECTIVE AGREEMENT OR INTERPRET THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT IN THE ABSENCE OF THE EMPLOYER IN THIS CASE SINCE SUCH INTERPRETATION MIGHT ADVERSELY AFFECT THE RIGHT OF THE EMPLOYER.

12. HAVING CONSIDERED ALL THE EVIDENCE IN THIS CASE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT WE HAVE JURISDICTION UNDER THE ACT TO MAKE A DETERMINATION IN THIS MATTER. WE FURTHER FIND THAT WE HAVE THE NECESSARY POWER TO EXERCISE OUR JURISDICTION IN THE ABSENCE OF THE EMPLOYER SINCE NO RELIEF IS CLAIMED AGAINST THE EMPLOYER. THE EVIDENCE CLEARLY ESTABLISHES THAT CUSTOMER CONTACT MEN DO NOT PERFORM ANY COMPOSING ROOM WORK. INDEED, WHEN TWO CUSTOMER CONTACT MEN WITHDREW FROM THE UNION, THE UNION TOOK NO STEPS TO ENFORCE THE PROVISIONS OF ARTICLE 3 OF THE COLLECTIVE AGREEMENT WITH RESPECT TO THEM. WHILE CUSTOMER CONTACT MEN EMPLOYED BY OTHER COMPANIES MAY ENJOY BENEFITS UNDER THE PENSION FUND NEGOTIATED BY THE UNION, THERE WOULD APPEAR TO BE NOTHING IN THE COLLECTIVE AGREEMENT TO COMPEL THEIR EMPLOYERS TO PROVIDE SUCH BENEFITS AND SINCE THE EVIDENCE IN THIS CASE ESTABLISHES THAT CUSTOMER CONTACT MEN ARE NOT INCLUDED IN THE BARGAINING UNIT REPRESENTED BY THE UNION, WE MUST ASSUME THAT THE PROVISION OF SUCH PENSION FUND BENEFITS TO SUCH CUSTOMER CONTACT MEN IS DONE ON A VOLUNTARY BASIS BY THE OTHER COMPANIES.

13. WHILE IT IS UNDERSTANDABLE WHY THE RESPONDENT IS NOT ANXIOUS TO HAVE THE COMPLAINANT OR INDEED OTHER CUSTOMER CONTACT MEN WITHDRAW FROM THE UNION, IT WOULD APPEAR THAT SINCE THEY "CEASE TO PERFORM WORK

THAT IS WITHIN THE JURISDICTION OF THE UNION" THEY ARE "ENTITLED TO THE WITHDRAWAL CARD ISSUED BY THIS UNION" PURSUANT TO THE PROVISIONS OF ARTICLE XIV OF THE UNION'S CONSTITUTION. IF OTHER MEMBERS WHO CEASE TO PERFORM WORK ARE PROVIDED HONOURABLE WITHDRAWAL CARDS, IT WOULD BE DISCRIMINATORY ON THE PART OF THE UNION TO REFUSE TO PROVIDE THE COMPLAINANT WITH AN HONOURABLE WITHDRAWAL CARD SINCE HE CLEARLY HAS CEASED TO PERFORM WORK THAT IS WITHIN THE UNION'S JURISDICTION. IT MAY WELL BE THAT THE UNION WILL SUCCEED IN NEGOTIATING THE CLASSIFICATION OF CUSTOMER CONTACT MAN INTO THE NEXT COLLECTIVE AGREEMENT WITH THE COMPLAINANT'S EMPLOYER. IF SUCH EVENT OCCURS, THE UNION WOULD THEN BE ABLE TO RELY UPON THE PROVISIONS OF ARTICLE 3 OF THE COLLECTIVE AGREEMENT. HOWEVER, UNTIL SUCH EVENT OCCURS, THE UNION CLEARLY DOES NOT REPRESENT THE COMPLAINANT IN HIS RELATIONS WITH HIS EMPLOYER AND HAS NO VALID CLAIM OR JURISDICTION OVER THE WORK PERFORMED BY THE COMPLAINANT UNDER THE COLLECTIVE AGREEMENT IN THIS MATTER.

14. THE STEPS TAKEN BY THE RESPONDENT TO TRY TO CAUSE THE COMPLAINANT TO CONTINUE AS A DUES PAYING UNION MEMBER AND THE RESPONDENT'S REFUSAL TO PROVIDE AN HONOURABLE WITHDRAWAL CARD AMOUNTS TO COERCION BY THE RESPONDENT TO COMPEL THE COMPLAINANT TO CONTINUE TO BE A MEMBER OF THE RESPONDENT UNION ESPECIALLY WHEN CONSIDERATION IS GIVEN TO THE EFFECT OF THE ALTERNATIVES OPEN TO THE COMPLAINANT. IN THE CIRCUMSTANCES DESCRIBED ABOVE, WE THEREFORE FIND THAT THE RESPONDENT HAS VIOLATED THE PROVISIONS OF SECTION 61 OF THE LABOUR RELATIONS ACT.

15. THE BOARD ACCORDINGLY DIRECTS THAT THE UNION PROVIDE THE COMPLAINANT WITH AN HONOURABLE WITHDRAWAL CARD AND REIMBURSE THE COMPLAINANT WITH ALL DUES PAID BY HIM FROM AND AFTER DECEMBER 1, 1970.

DECISION OF BOARD MEMBER O. HODGES: JUNE 7, 1972.

1. I DISSENT.

2. THE DECISION OF THE MAJORITY CANNOT PREVENT THE EXPULSION OF THE APPLICANT FROM THE UNION UNDER THE TERMS OF ARTICLE V OF THE INTERNATIONAL UNION CONSTITUTION. IN THAT EVENT, AN "HONOURABLE WITHDRAWAL CARD" WOULD BE CANCELLED. THE DECISION OF THE MAJORITY MAY BE AT BEST A SHORT TERM, HOLLOW VICTORY FOR THE APPLICANT.

3. THE APPLICANT MIGHT WELL HAVE WON HIS POINT HAD HE ATTENDED THE MEETING OF LOCAL UNION #91 ON NOVEMBER 29, 1970. HE CHOSE RATHER TO AVOID MEETING THE ISSUE ON THE FLOOR OF THE UNION MEETING. THE LOCAL UNION HAD THE AUTONOMY AT THAT TIME TO GRANT THE REQUEST, SINCE JURISDICTION HAD NOT BEEN CLAIMED FOR CONTACT MEN. HOWEVER, JURISDICTION OVER THIS CLASSIFICATION IS NOW INCLUDED IN THE CURRENT COLLECTIVE BARGAINING DEMANDS OF THE UNION, AND THERE IS NO LONGER AN OPTION OPEN TO THE UNION TO GRANT THE APPLICANT'S REQUEST.

4. I WOULD NOT INTERFERE IN THE AFFAIRS OF THE TRADE UNION UNDER THESE CIRCUMSTANCES. THE APPLICANT HAS FAILED TO TAKE ADVANTAGE OF DUE PROCESS OPEN TO HIM WITHIN THE VOLUNTARY FRAMEWORK OF HIS TRADE UNION, WHICH HE TESTIFIED HE MAY WANT TO JOIN AGAIN.

5. HE COULD HAVE QUIT THE UNION BY REFUSING TO PAY DUES AT ANY TIME, AS OTHERS IN HIS CLASSIFICATION AT HIS PLACE OF EMPLOYMENT DID. THERE IS NO CHECK-OFF PROVISION. NOTHING HAPPENED TO THEM. A WITHDRAWAL CARD IS NOT A PREREQUISITE TO JOINING THE UNION AGAIN.

6. I DO NOT CONSIDER THE DENIAL OF A WITHDRAWAL CARD AS "INTIMIDATION OR COERCION" WITHIN THE MEANING OF SECTION 61 OF THE ACT. CONSIDERING ALL OF THE EVIDENCE AND IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, MY FINDING IS THAT THE APPLICATION BE DISMISSED.

1929-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. FRONTENAC BEVERAGES REG'D (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: W.W. TILLER FOR THE APPLICANT; R.D. PERKINS FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 8, 1972.

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3. IN THIS CASE OF THE DOCUMENTARY EVIDENCE FILED BY THE APPLICANT THREE APPLICATIONS FOR MEMBERSHIP FAILED TO DISCLOSE WHETHER ANY MONEY PAYMENT WAS MADE BY PERSONS WHO APPLIED FOR MEMBERSHIP. ACCORDINGLY, WE ARE UNABLE TO FIND THAT THE PERSONS WHO SIGNED THOSE APPLICATIONS FOR MEMBERSHIP ON BEHALF OF THE APPLICANT ARE MEMBERS WITHIN THE MEANING OF SECTION 1(1)(J)(II) OF THE LABOUR RELATIONS ACT; THE TORONTO UNION OF TAXI EMPLOYEES V. HOVE TAXI LTD. [1971] OLRB REP. 14.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT ON MAY 9, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

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2004-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 93 (APPLICANT) V. PETRIFOND FOUNDATION COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #1) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (INTERVENER #2).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: MARK McKENNY FOR THE APPLICANT; LOUIS DONOLO JR. FOR THE RESPONDENT; H.A. HERRON FOR INTERVENER #1; F. MANONI FOR INTERVENER #2.

DECISION OF THE BOARD: JUNE 8, 1972.

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3. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

4. THE BOARD FURTHER FINDS IN THE CIRCUMSTANCES OF THIS APPLICATION AND HAVING REGARD TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT THAT ALL PILE DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERVENER #1 MADE ON APRIL 30, 1969 AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERVENER #2 EFFECTIVE FROM MAY 1, 1969, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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1762-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) v. KAPUSKASING BOARD OF EDUCATION (RESPONDENT) v. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: R. KOSKIE AND H. HEGGE FOR THE APPLICANT; C. G. RIGGS AND A. McNAUGHTON FOR THE RESPONDENT; W. A. ACTON FOR THE INTERVENER.

DECISION OF VICE-CHAIRMAN R. A. FURNESS AND BOARD MEMBER E. BOYER: JUNE 8, 1972.

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2. THIS APPLICATION FOR CERTIFICATION HAS BEEN FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT. THE WORK AFFECTED BY THIS APPLICATION IS THE CONSTRUCTION OF A SWIMMING POOL BY THE RESPONDENT. IT APPEARS FROM THE INFORMATION SUPPLIED TO THE BOARD BY THE RESPONDENT THAT THE RESPONDENT IS CONSTRUCTING THE SWIMMING POOL AS THE RESULT OF RECEIVING A GRANT FROM THE FEDERAL GOVERNMENT THROUGH ITS LOCAL INITIATIVES PROGRAMME. THE RESPONDENT INFORMED THE BOARD THAT BY VIRTUE OF THE CONDITIONS ATTACHED TO SUCH GRANT, THE RESPONDENT HAD AGREED TO OPERATE AS A GENERAL CONTRACTOR AND THAT IT WAS ALSO OBLIGED TO HIRE NEW EMPLOYEES REQUIRED FOR SUCH CONSTRUCTION WHICH IT DID NOT ALREADY HAVE ON ITS PAYROLL THROUGH THE CANADA MANPOWER CENTRE.

3. WHILE IT IS QUITE CLEAR THAT THE GENERAL NATURE OF THE RESPONDENT'S BUSINESS IS EDUCATION, IT IS ALSO APPARENT THAT IT HAS ENTERED THE FIELD OF CONSTRUCTION FOR THE PURPOSE OF CONSTRUCTING A SWIMMING POOL.

4. THE BOARD HAS, IN THE PAST, HAD OCCASION TO CONSIDER SITUATIONS WHERE EMPLOYERS, WHOSE MAIN BUSINESS IS NOT IN THE CONSTRUCTION INDUSTRY, HAVE, NEVERTHELESS, ENTERED THE CONSTRUCTION INDUSTRY ON WHAT MAY WELL HAVE BEEN THEIR FIRST AND LAST CONSTRUCTION INDUSTRY VENTURE. THE BOARD HAS, IN A SERIES OF DECISIONS HELD THAT, WHILE THE PRINCIPAL BUSINESS OF AN EMPLOYER MAY NOT BE IN THE CONSTRUCTION INDUSTRY, SUCH EMPLOYER MAY ALSO OPERATE A BUSINESS IN THE CONSTRUCTION INDUSTRY. THE FACT THAT AN EMPLOYER DOES NOT ANTICIPATE IT WILL REGULARLY CARRY ON A BUSINESS IN THE CONSTRUCTION INDUSTRY IN THE FUTURE OR EVEN CARRY ON ONE MORE OPERATION IN THE CONSTRUCTION INDUSTRY, IS NO REASON NOT TO HOLD THAT SUCH EMPLOYER IS CARRYING ON A BUSINESS IN THE CONSTRUCTION INDUSTRY. AN EMPLOYER MAY, OF COURSE, ALWAYS CHANGE ITS MIND IN THE FUTURE. REFERENCE IS MADE TO THE TOPS MARINA MOTOR HOTEL CASE, 64 CLLC ¶16,004, OLRB MONTHLY REPORT, JANUARY 1964, P. 583,

IN THE CANADIA NIAGARA FALLS LIMITED CASE, OLRB MONTHLY REPORT, APRIL 1966, P. 44, AND IN THE MATTAGAMI LAKE MINES LIMITED (NO PERSONAL LIABILITY) CASE, OLRB MONTHLY REPORT, FEBRUARY 1970, P. 1356. SIMILARLY, THERE IS NO REQUIREMENT THAT IN ORDER TO OPERATE A BUSINESS AN OPERATOR OF SUCH BUSINESS MUST NECESSARILY CARRY ON SUCH VENTURE WITH A VIEW TO MAKING A PROFIT. WE, ACCORDINGLY, FIND THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

5. THE APPLICANT IS SEEKING CERTIFICATION FOR A BARGAINING UNIT DESCRIBED IN TERMS OF

"ALL CARPENTERS, CARPENTER APPRENTICES AND COMMON LABOURERS IN THE EMPLOY OF THE EMPLOYER SAVE AND EXCEPT ALL THOSE ABOVE THE RANK OF FOREMAN IN THE TOWN OF KAPUSKASING."

6. THE INTERVENER IS A PARTY TO A COLLECTIVE AGREEMENT WITH THE RESPONDENT WHICH WAS ENTERED INTO ON NOVEMBER 8, 1971. THE INTERVENER CLAIMS THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE ALREADY COVERED BY SUCH COLLECTIVE AGREEMENT. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AND TO THE EVIDENCE BEFORE IT, WE FIND THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE NOT COVERED BY THE SAID COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER.

7. HAVING REGARD TO THE CIRCUMSTANCES OF THIS APPLICATION AND TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, WE FURTHER FIND THAT ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ON CONSTRUCTION PROJECTS WORKING AT OR OUT OF KAPUSKASING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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11. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER H. J. F. ADE: JUNE 8, 1972.

HAVING CONSIDERED THE DECISION OF MY COLLEAGUES IN THIS CASE I MUST RESPECTFULLY DISSENT.

IN MY VIEW A FINDING THAT THE RESPONDENT IS "OPERATING A BUSINESS IN THE CONSTRUCTION INDUSTRY" IS STRETCHING UNREASONABLY THE APPLICATION OF SECTION 106(c) OF THE ACT BEYOND THAT WHICH CAN OR OUGHT TO BE READ INTO ITS MEANING. SURELY IF THE LEGISLATORS HAD IN-

TENDED AS MY COLLEAGUES HAVE IMPLIED, THAT THIS SECTION 106(c) APPLY TO ALL PERSONS ENGAGED IN CONSTRUCTION THEY WOULD HAVE SAID SO. INSTEAD, THE WORDING IS SUCH AS TO INDISPUTABLY APPLY TO "A PERSON WHO OPERATES A BUSINESS IN THE CONSTRUCTION INDUSTRY" AND SO CONFINES ITS APPLICATION TO THE OPERATION OF A BUSINESS THEREIN.

THE RESPONDENT IN THIS CASE OPERATES WITHIN THE FIELD OF EDUCATION AND ITS BUSINESS IF IT CAN SO BE CALLED, IS AND HAS BEEN LIMITED THERETO AND TO THE NORMAL MAINTENANCE AND SERVICES USUALLY ASSOCIATED THERewith.

THE RESPONDENT UNDERTOOK TO BUILD A SWIMMING POOL AS A PARTICIPANT IN THE FEDERAL GOVERNMENT LOCAL INITIATIVE PROGRAM (L.I.P.) AMONG THE CONDITIONS OF THE LOAN WAS THE DIRECTION THAT THE RESPONDENT DO THE WORK ITSELF AND HIRE NEEDED ADDITIONAL PERSONNEL FOR THE JOB THROUGH THE LOCAL CANADA MANPOWER OFFICE. THE RESPONDENT USED SOME OF ITS REGULAR MAINTENANCE FORCE AUGMENTED BY EMPLOYEES HIRED IN ACCORDANCE WITH THE CONDITIONS OF THE LOAN.

THIS PROJECT WAS INCIDENTAL TO ITS BUSINESS IN THE FIELD OF EDUCATION, BUILT ON ITS OWN PROPERTY AND FOR WHAT APPEARED TO BE ITS OWN USE. THE RESPONDENT, I BELIEVE WAS ACTING IN ITS OWN INTERESTS DIRECTLY TO FURTHER AND BETTER DISCHARGE THE RESPONSIBILITIES OF ITS BUSINESS WHICH IS THAT OF EDUCATION AND NOT CONSTRUCTION.

MY COLLEAGUES REFER TO THREE CASES TO SUPPORT THEIR DECISION. ALL THREE DO TO A DEGREE PARALLEL ONE ANOTHER BUT NOT THE INSTANT CASE DEALT WITH HEREIN. IN THE FIRST TWO CASES MENTIONED IN THE MAJORITY DECISION IT IS CLEAR TO ME THAT THE RESPONDENT'S PRIMARY, IF NOT THE SOLE REASON FOR BEING WAS TO CONSTRUCT AND THEN OPERATE THE FRUIT OF THEIR EFFORTS. I DO NOT BELIEVE I WOULD HAVE DIFFICULTY IN FINDING THAT IN BOTH CASES THE RESPONDENT INITIALLY HAD ENTERED AND OPERATED A BUSINESS IN THE CONSTRUCTION INDUSTRY.

IN THE THIRD CASE MENTIONED, NAMELY MATTAGAMI LAKE MINES LIMITED (NO PERSONAL LIABILITY) THE NATURE AND EXTENT OF THE WORK UNDERTAKEN AMONG OTHER INGREDIENTS OF THE CASE MAY HAVE LED ME TO THE CONCLUSION THAT THE RESPONDENT DID IN FACT ENTER AND OPERATE A BUSINESS IN THE CONSTRUCTION INDUSTRY. IN ANY EVENT I FIND SUFFICIENT DISSIMILARITY BETWEEN THAT CASE AND THE INSTANT ONE AS TO REGARD IT AS IRRELEVANT TO THE ISSUE UNDER DISCUSSION.

IT IS WORTHY OF NOTE THAT IN THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION CASE (BOARD FILE NO. 304-71-R) THE BOARD FOUND THAT THE BOARD OF EDUCATION FOR THE CITY OF TORONTO WAS NOT AN EMPLOYER IN THE CONSTRUCTION INDUSTRY. ALBEIT SUCH DECISION WAS MADE UPON RECOGNITION OF THE AGREEMENT OF THE APPLICANT AND THE RESPON-

DENT. I DO NOT BELIEVE THE SIGNIFICANCE OF THE BOARD'S DECISION SUFFERS THEREFROM.

HAVING FULL REGARD FOR THE CIRCUMSTANCES UNDER WHICH THE KAP-USKASING BOARD OF EDUCATION (RESPONDENT IN INSTANT CASE) UNDERTOOK TO BUILD THE SWIMMING POOL, THE NATURE AND EXTENT OF THE WORK AND THE END USE OF THE FINISHED PROJECT I CANNOT FIND THAT THE RESPONDENT HAD DEPARTED FROM NOR HAD ADDED TO ITS NORMAL FUNCTION BY ENTERING INTO AND OPERATING A BUSINESS IN THE CONSTRUCTION INDUSTRY.

1612-71-M: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LIVINGSTON TRANSPORTATION LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

DECISION OF THE BOARD: JUNE 9, 1972.

1. THE APPLICANT BY LETTERS DATED MAY 3 AND MAY 17, 1972 HAS REQUESTED THE BOARD TO DIRECT THAT MR. M. O'GRADY, A BANK MANAGER, ATTEND AT A HEARING BEFORE THE EXAMINER APPOINTED BY THE BOARD IN ITS DECISION OF FEBRUARY 29, 1972 AND PRODUCE THE RECORDS OF PERSONS WHOSE STATUS IS IN DISPUTE IN THIS APPLICATION.

2. HAVING CONSIDERED THE ARGUMENTS RAISED BY THE APPLICANT IN ITS LETTERS ABOVE REFERRED TO, THE BOARD IS OF THE VIEW THAT IT HAS NO JURISDICTION TO MAKE THE ORDER REQUESTED BY THE APPLICANT IN VIEW OF THE PROVISIONS OF THE EVIDENCE ACT, R.S.O. 1970, c. 151, s. 1(A) AND (B), s. 34(1) AND (5); THE BANK ACT, R.S.C. 1970, c. B-1, s. 2(1) AND s. 4; THE EVIDENCE ACT, R.S.C. 1970, c. E-10, s. 29(5) AND (8).

3. THE BOARD THEREFORE DENIES THE APPLICANT'S REQUEST.

1526-71-R: THE UNITED SHOE WORKERS OF AMERICA AFL CIO CLC (APPLICANT) V. DOMINI SHOE PRODUCTS LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: HAROLD H. FULKER, AND ELLIS W. LEACH FOR THE APPLICANT; ROSS CAMPBELL AND EDWARD COUGLER FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER P. J. O'KEEFFE: JUNE 9, 1972.

1. PURSUANT TO THE DECISION DATED FEBRUARY 16, 1972, THE BOARD DIRECTED THAT A REPRESENTATION VOTE BE HELD IN THIS MATTER.

2. FOLLOWING THE TAKING OF THE REPRESENTATION VOTE ON MARCH 22, 1972, A TIMELY STATEMENT OF DESIRE WAS FILED WITH THE BOARD BY THE RESPONDENT AND IN ADDITION TWO HANDWRITTEN LETTERS BEARING IN TOTAL THE SIGNATURES OF THREE EMPLOYEES PURPORTING TO BE EMPLOYEES OF THE RESPONDENT, ALL ALLEGING IN EFFECT, THAT THE AFOREMENTIONED THREE EMPLOYEES DID NOT HAVE AN OPPORTUNITY TO VOTE IN THIS MATTER.

3. THE REGISTRAR ACCORDINGLY SET THE MATTER DOWN FOR THE HEARING BY THE BOARD OF THE REPRESENTATIONS AND EVIDENCE IN THIS REGARD AT THE BOARD ROOM IN TORONTO, ON WEDNESDAY, MAY 10, 1972, AT 9:30 A.M. NOTICE OF HEARING TO THIS EFFECT WAS SENT BY REGISTERED MAIL ON APRIL 6, 1972, TO THE RESPONDENT, ITS COUNSEL AND TO EACH OF THE AFOREMENTIONED EMPLOYEES, AS WELL AS TO THE APPLICANT.

4. UPON THE FAILURE OF THE AFOREMENTIONED THREE EMPLOYEES TO ATTEND AT THE HEARING OF THIS MATTER ON MAY 10, 1972, COUNSEL FOR THE RESPONDENT MOVED FOR AN ADJOURNMENT OF THESE PROCEEDINGS SO AS TO ENABLE THE BOARD TO HEAR THE TESTIMONY OF THESE EMPLOYEES. MR. FULKER, HOWEVER, ON BEHALF OF THE APPLICANT UNION, OPPOSED THE MOTION FOR AN ADJOURNMENT IN THESE CIRCUMSTANCES.

5. THE BOARD HEREBY CONFIRMS ITS DECISION GIVEN ORALLY AT THE HEARING DISMISSING THE MOTION. IN THIS REGARD, REFERENCE SHOULD BE HAD TO THE RECENT DECISIONS OF THE BOARD IN THE OTTAWA CITIZEN CASE OLRB M. R. MARCH 1969, P. 1280; MELNOR MANUFACTURING LTD. CASE OLRB M.R. MARCH 1969, P. 1288 AND NICK MASNEY HOTELS LTD. CASE OLRB M.R. DECEMBER 1968, P. 965. THE DECISION OF THE BOARD IN THE LATTER CASE WAS ULTIMATELY APPEALED TO THE ONTARIO COURT OF APPEAL IN REGINA V. ONTARIO LABOUR RELATIONS BOARD, EX PARTE NICK MASNEY HOTELS LTD. [1970] 3 O.R. 461. IN OUR OPINION, THE DECISION OF LASKIN J. A. (AS HE THEN WAS) IS PARTICULARLY APPLICABLE TO THE FACTS IN THE INSTANT CASE, WHEREIN HE STATES AT PAGE 465:

"THIS COURT CANNOT SAY,.....THAT THE REFUSAL OF AN ADJOURNMENT TO THE EMPLOYER IN THE PRESENT CASE AMOUNTED TO A DENIAL OF NATURAL JUSTICE. THE ONTARIO LABOUR RELATIONS BOARD DEALS IN CERTIFICATION MATTERS WITH FLUID SITUATIONS WHICH CANNOT BE JUDGED BY THE MORE LEISURELY STANDARDS THAT OPERATE IN THE PROSECUTION OF A CLAIM FOR DAMAGES FOR A TORT OR FOR A BREACH OF CONTRACT WHERE THE SITUATION IS FAIRLY FROZEN WHEN THE TORT OR THE BREACH OF CONTRACT HAS OCCURRED. EXPEDITION IS IMPORTANT TO A UNION, TO EMPLOYEES

AND TO AN EMPLOYER SINCE THE CERTIFICATION IS MERELY THE FIRST STEP IN AN OFTEN LABORIOUS COLLECTIVE BARGAINING PROCESS. WHEN, AS HERE, ADEQUATE NOTICE HAS BEEN GIVEN OF A HEARING DATE AND AN OPPORTUNITY AFFORDED TO MAKE REPRESENTATIONS, THE FAILURE OF A PARTY TO SECURE AN AGREEMENT FOR AN ADJOURNMENT, WHERE IT HAS NOT BEEN MISLED BY ANOTHER PARTY TO THAT OTHER'S ADVANTAGE AND WHERE THE BOARD HAS STOOD ABOVE THE NEGOTIATIONS AND HAS PROPERLY FOLLOWED ITS OWN RULES, FASHIONED FOR THE PROTECTION OF ALL PARTIES, THERE IS NO DENIAL OF NATURAL JUSTICE TO SUPPORT A SUCCESSFUL RESORT TO CERTIORARI AGAINST THE BOARD."

6. HAVING REGARD THEREFORE TO ALL OF THE EVIDENCE ADDUCED AT THE HEARING AND THE REPRESENTATIONS MADE WITH RESPECT THERETO, THE BOARD IS OF THE VIEW THAT THERE IS NOTHING BEFORE US WHICH WOULD CAUSE THE BOARD TO SET ASIDE THE REPRESENTATION VOTE WHICH HAS BEEN CONDUCTED IN THIS MATTER AND THEREFORE TO DIRECT A NEW VOTE IN THIS REGARD.

7. ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD MORE THAN FIFTY PER CENT OF THE BALLOTS CAST WERE CAST IN FAVOUR OF THE APPLICANT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

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DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: JUNE 9, 1972.

1. I REGRET THAT I AM UNABLE TO ACCEPT THE FINDINGS OF MY COLLEAGUES. IN ACCORDANCE WITH THE DECISION OF THIS BOARD DATED FEBRUARY 16TH, 1972, A REPRESENTATION VOTE WAS HELD AMONGST THE EMPLOYEES. SUBSEQUENT TO SUCH VOTE, THE EMPLOYER WROTE TO THE BOARD ALLEGING, AS FOLLOWS:

" ONTARIO LABOUR RELATIONS BOARD

B E T W E E N:

THE UNITED SHOE WORKERS OF AMERICA
AFL CIO CLC,

APPLICANT,

- AND -

DOMINI SHOE PRODUCTS LIMITED,

RESPONDENT.

REPRESENTATION BY DOMINI SHOE PRODUCTS LIMITED,
1031 QUEEN STREET, PRESTON, ONTARIO, UPON THE
REPRESENTATION VOTE HELD ON MARCH 22ND, 1972,
UNDER THE DIRECTION OF THE BOARD DATED FEBRUARY
16TH, 1972.

DOMINI SHOE PRODUCTS LIMITED WISH TO MAKE
THE FOLLOWING REPRESENTATIONS RELATING TO THE
REPRESENTATION VOTE, AND STATE AS FOLLOWS:-

- (1) NINE (9) EMPLOYEES WERE ENTITLED TO VOTE.
- (2) ONLY SIX (6) EMPLOYEES REGISTERED A VOTE.
- (3) ALL NINE (9) EMPLOYEES WERE PRESENT ON THE PREMISES.
- (4) MR. ROSS CAMPBELL, THE PRESIDENT OF DOMINI SHOE PRODUCTS LIMITED, INFORMED MR. M. DESOUSA THAT HE WAS PREPARED TO HAVE THE EMPLOYEES ASSEMBLE IN THE LUNCH ROOM TO VOTE; HOWEVER, MR. DESOUSA SAID THAT THIS WAS NOT NECESSARY, AS THE SCRUTINEERS WOULD NOTIFY THEM.
- (5) THE TWO SCRUTINEERS, MRS. ALICE BRITTON AND MRS. MARY HASSALL, WENT TO 8 OF THE 9 EMPLOYEES AND NOTIFIED THEM VERBALLY THAT THEY WERE ENTITLED TO VOTE AND THAT POLLS WOULD BE OPEN IN 5 MINUTES IF THEY WISHED TO REGISTER A VOTE. THE 9TH EMPLOYEE COULD NOT SPEAK OR UNDERSTAND ENGLISH, AND WAS TO BE NOTIFIED IN HIS OWN LANGUAGE; HOWEVER, THIS WAS NOT DONE.
- (6) TWO (2) OF THE EMPLOYEES ARE PORTUGUESE, SPEAKING VERY LITTLE ENGLISH, AND CANNOT READ ENGLISH. THEY UNDERSTOOD THAT THEY WOULD THEN BE CALLED INDIVIDUALLY TO VOTE. THEY WAITED AT THEIR MACHINES TO BE CALLED, BUT THIS WAS NOT DONE.
- (7) A THIRD EMPLOYEE, AS WELL, UNDERSTOOD THAT HE WOULD BE RECEIVING NOTIFICATION WHEN THE POLLS WOULD BE OPEN, AND HE WOULD GO TO VOTE. HE ALSO WAITED TO BE NOTIFIED WHEN TO VOTE.

- (8) THESE THREE (3) EMPLOYEES DEFINITELY WISHED THE OPPORTUNITY TO VOTE, AND THEY WOULD HAVE CAST THEIR BALLOTS IF THEY HAD BEEN PROPERLY INFORMED.

DOMINI SHOE PRODUCTS LIMITED THEREFORE REQUESTS THAT THE BOARD GRANT DOMINI SHOE PRODUCTS LIMITED A HEARING FOR ANOTHER REPRESENTATION VOTE, PRIOR TO ANY DECISION BEING MADE BY THE ONTARIO LABOUR RELATIONS BOARD.

DATED THIS 24TH DAY OF MARCH, 1972.

DOMINI SHOE PRODUCTS LIMITED,

PER: _____

PRESIDENT "

2. UNDER SEPARATE COVER THE EMPLOYEES, MANUEL NEVES AND JOSE CARLOS FERREIRA MADE REPRESENTATIONS IN A LETTER TO THE BOARD WRITTEN IN PORTUGUESE, WHICH LETTER WAS TRANSLATED FOR THE BOARD BY THE CHIEF TRANSLATOR OF THE DEPARTMENT OF LABOUR AS FOLLOWS:

"(ADDRESS)

27TH MARCH, 1972.

DEPARTMENT OF LABOUR.

DEAR SIRs,

ON THE 22ND MARCH 1972 A VOTE HAS BEEN HELD IN OUR FACTORY, DOMINI SHOE LTD. IN PRESTON, ONTARIO, IN ORDER TO ASCERTAIN IF WE DESIRE TO FORM A UNION. THE UNION INVOLVED IS THE UNITED SHOE WORKERS OF AMERICA.

IN VIEW OF THE MISUNDERSTANDING REGARDING THE VOTING TIME, I AND ANOTHER EMPLOYEE DID NOT HAVE THE OPPORTUNITY TO VOTE.

WE WOULD APPRECIATE YOUR ENDEAVOUR TO GUARANTEE OUR RIGHTS AS EMPLOYEES BY ENABLING US TO VOTE IN THIS IMPORTANT MATTER. THANK YOU.

YOURS SINCERELY,

(2 SIGNATURES)"

3. AGAIN, UNDER SEPARATE COVER, THE BOARD RECEIVED AN ADDITIONAL LETTER DATED MARCH 29, 1972, FROM BERNARD CHARLEBOIS, AN EMPLOYEE, WHICH STATED AS FOLLOWS:-

"MARCH 29/1972

(NAME AND ADDRESS)

DEAR SIRs:

DURING THE REPRESENTATION VOTE BETWEEN DOMINI SHOES PRODUCTS LTD. AND UNITED SHOE WORKERS OF AMERICA WE WERE TOLD THAT THE POLES WOULD BE OPEN IN 5 MINUTES.

I EXPECTED TO VOTE WITHIN FIVE MINUTES TIME BUT WAS NOT CALLED BECAUSE I WAS WORKING BY MY MACHINE I DIDN'T REALIZE THAT THE POLES WERE CLOSED UNTIL IT WAS TOO LATE I FEEL VERY STRONGLY IN THE MATTER, AND WANT MY VOTE REGISTERED. IF NECESSARY I AM WILLING TO ATTEND A HEARING AT THE BOARD

YOURS TRULY,

BERNARD CHARLEBOIS
(ADDRESS)"

4. EACH OF THE THREE LETTERS WAS ACKNOWLEDGED BY THE BOARD; THE EMPLOYER, ITS SOLICITORS AND THE INDIVIDUAL EMPLOYEES RECEIVED WITH SUCH ACKNOWLEDGMENT A DOCUMENT HEADED NOTICE OF HEARING, WHICH READ, INTER ALIA:-

"TAKE NOTICE OF THE HEARING BY THE BOARD TO
HEAR REPRESENTATIONS AND EVIDENCE OF THE RESPONDENT
WITH RESPECT TO THE VOTE HELD IN THIS MATTER ON
MARCH 22ND, 1972, AT THE BOARD ROOM, 400 UNIVERSITY
AVENUE, TORONTO 2, ONTARIO ON WEDNESDAY THE 10TH
DAY OF MAY, 1972, AT 9:30 O'CLOCK IN THE FORENOON.
(E.D.T.)

5. NOTWITHSTANDING THE REQUESTS MADE BY THE INDIVIDUAL EMPLOYEES, IT WOULD APPEAR FROM MY READING OF THE NOTICE OF HEARING THAT THE EVIDENCE TO BE HEARD ON MAY 10TH, 1972, WAS ONLY THAT EVIDENCE OF THE RESPONDENT.

6. AT THE HEARING ON MAY 10TH, 1972, AS NOTED BY THE MAJORITY IN ITS DECISION, THE INDIVIDUAL EMPLOYEES FAILED TO ATTEND. THE PRESIDENT OF THE COMPANY ON MAY 10TH, TESTIFIED TO THE BOARD THAT HE HAD ADVISED THEM THAT IT WAS NOT NECESSARY FOR THEM TO ATTEND. WHEN THE BOARD INDICATED THAT IT WOULD SEEM OBLIGATORY THAT THE EMPLOYEES GIVE EVIDENCE IN SUPPORT OF THEIR REPRESENTATIONS TO THE BOARD, COUNSEL FOR THE COMPANY REQUESTED AN ADJOURNMENT, WHICH REQUEST WAS DENIED BY THE BOARD. THE COMPANY PRESIDENT, THEREUPON INDICATED THAT THE EMPLOYEES HAD ATTENDED UPON HIM IMMEDIATELY AFTER THE POLLS HAD CLOSED, REQUESTING AN OPPORTUNITY TO VOTE AND EXPRESSING THEIR FEELINGS THAT THROUGH A MIS-UNDERSTANDING THEY WERE DEPRIVED OF THEIR RIGHT TO VOTE. THE EVIDENCE OF THE COMPANY WAS THAT ONE OF THE SUBJECT EMPLOYEES NEITHER READ, WROTE NOR UNDERSTOOD ENGLISH AND THAT ANOTHER OF THE SUBJECT EMPLOYEES NEITHER READ NOR WROTE ENGLISH.

7. THE MAJORITY OF THE BOARD, IN REJECTING THE COMPANY'S REQUEST FOR AN ADJOURNMENT IN ORDER THAT IT MIGHT BE ALLOWED TO HAVE THE INDIVIDUAL EMPLOYEES ATTEND AND EXPLAIN THEIR RESPECTIVE POSITION, SUPPORTED ITS POSITION WITH A QUOTATION FROM THE DECISION OF LASKIN, J. A. IN REGINA V ONTARIO LABOUR RELATIONS BOARD, EX PARTE NICK MASHNEY HOTELS LTD. [1970] 3 O.R. 461 AT P. 465;

"THIS COURT CANNOT SAY,....THAT THE REFUSAL OF AN ADJOURNMENT TO THE EMPLOYER IN THE PRESENT CASE AMOUNTED TO A DENIAL OF NATURAL JUSTICE. THE ONTARIO LABOUR RELATIONS BOARD DEALS IN CERTIFICATION MATTERS WITH FLUID SITUATIONS WHICH CANNOT BE JUDGED BY THE MORE LEISURELY STANDARDS THAT OPERATE IN THE PROSECUTION OF A CLAIM FOR DAMAGES FOR A TORT OR FOR A BREACH OF CONTRACT WHERE THE SITUATION IS FAIRLY FROZEN WHEN THE TORT OR THE BREACH OF CONTRACT HAS OCCURRED. EXPEDITION IS IMPORTANT TO A UNION, TO EMPLOYEES AND TO AN EMPLOYER SINCE THE CERTIFICATION IS MERELY THE FIRST STEP IN AN OFTEN LABORIOUS COLLECTIVE BARGAINING PROCESS. WHEN, AS HERE, ADEQUATE NOTICE HAS BEEN GIVEN OF A HEARING DATE AND AN OPPORTUNITY AFFORDED TO MAKE REPRESENTATIONS, THE FAILURE OF A PARTY TO SECURE AN AGREEMENT FOR AN ADJOURNMENT, WHERE IT HAS NOT BEEN MISLED BY ANOTHER PARTY TO THAT OTHER'S ADVANTAGE AND WHERE THE BOARD HAS STOOD ABOVE THE NEGOTIATIONS AND HAS PROPERLY FOLLOWED ITS OWN RULES, FASHIONED FOR THE PROTECTION OF ALL PARTIES, THERE IS NO DENIAL OF NATURAL JUSTICE TO SUPPORT A SUCCESSFUL RESORT TO CERTIORARI AGAINST THE BOARD."

I, TOO, USE THAT QUOTATION IN SUPPORT OF MY DECISION. IN MY OPINION, THE NOTICE OF HEARING DOES NOT AFFORD THE INDIVIDUAL EMPLOYEES THE RIGHT TO MAKE REPRESENTATIONS ON THEIR OWN BEHALF. HOWEVER, IF THE NOTICE OF HEARING WAS INTENDED TO CONVEY TO THESE EMPLOYEES (TWO OF WHOM NEITHER READ NOR WROTE ENGLISH) SOMETHING WHICH THE DOCUMENT, DOES NOT IN FACT SAY, THEN I WOULD FIND THAT THE EMPLOYEES HAVE BEEN MISLED BY THE EMPLOYER NOTIFYING THEM THAT IT WAS UNNECESSARY FOR THEM TO ATTEND THE HEARING OF MAY 10TH, 1972. THE RESULT IS THAT THREE EMPLOYEES, WITH AN INABILITY TO UNDERSTAND THE COMPLEXITIES OF PROCEDURES OF THE LABOUR RELATIONS BOARD ARE LEFT FEELING THAT THEY HAVE BEEN DEPRIVED OF THEIR RIGHT TO VOTE THROUGH A MISUNDERSTANDING WHICH SHOULD HAVE BEEN PREVENTED. IN MY OPINION, THIS STRAINS THE BOUNDS OF NATURAL JUSTICE. IT HAS BEEN OFTEN SAID THAT JUSTICE SHOULD NOT ONLY BE DONE, BUT SHOULD APPEAR TO BE DONE!

8. HAVING REGARD TO;

- (I) THE INABILITY OF THE EMPLOYEES TO UNDERSTAND ENGLISH;
- (II) THE MISLEADING BY THE EMPLOYER OF THE RIGHTS OF THE EMPLOYEES BEFORE THE LABOUR RELATIONS BOARD;
- (III) THE INCORRECTNESS IN THE NOTICE OF HEARING (IN MY OPINION) GIVEN TO THE EMPLOYEES RESPECTING THE HEARING OF MAY 10TH, 1972;
AND
- (IV) THE LACK OF A SPECIFIC DIRECTION BY THE BOARD TO THE EMPLOYEES ALLOWING THEM TO MAKE REPRESENTATIONS BEFORE THE BOARD;

I AM OF THE OPINION, THAT, AT THE VERY LEAST, JUSTICE DOES NOT APPEAR TO HAVE BEEN DONE.

9. AS A CONSEQUENCE, I WOULD HAVE GRANTED THE REQUEST OF THE EMPLOYEES TO MAKE REPRESENTATIONS WITH RESPECT TO THE REPRESENTATION VOTE DATED MARCH 22, 1972.

2045-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE PEEL COUNTY BOARD OF EDUCATION (RESPONDENT) v. THE PEEL COUNTY BOARD OF EDUCATION CARETAKERS' ASSOC. (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

DECISION OF THE BOARD:

JUNE 12, 1972.

1. THE NAME "THE PEEL COUNTY PUBLIC SCHOOL BOARD" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "THE PEEL COUNTY BOARD OF EDUCATION".

2. THE APPLICANT HAS REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

. . .

4. THE BOARD DIRECTS THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF PEEL, ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT ASSISTANT SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT SUPERVISOR AND FOREMAN, OFFICE STAFF, TECHNICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

5. FOR THE PURPOSE OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE TERM "TECHNICAL STAFF" REFERS TO "AUDIO VISUAL TECHNICIANS".

. . .

7. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO MR. L. CIUFO, THE BOARD FINDS THAT WHILE HE IS EMPLOYED ON A CO-OPERATION PROGRAM WITH THE PROVINCE OF ONTARIO HE IS IN FACT AN EMPLOYEE OF THE RESPONDENT AND ACCORDINGLY THERE IS NO REASON TO EXCLUDE HIM FROM THE VOTING CONSTITUENCY IN THIS MATTER. THE FACT THAT MR. CIUFO IS A VICTIM OF CEREBRAL PALSY CAN BE TAKEN INTO CONSIDERATION WHEN THE PARTIES NEGOTIATE A RATE FOR THE DUTIES PERFORMED BY MR. CIUFO. HOWEVER THAT MAY BE, THE BOARD FINDS THAT MR. CIUFO IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE VOTING CONSTITUENCY.

. . .

9. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER.

. . .

1858-72-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS - AFL, CIO, CLC (APPLICANT) v. FPE-PIONEER ELECTRIC LIMITED (RESPONDENT) v. DRAFTSMENS ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A. F. of L. - C. I. O., C. L. C. (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.J.F. ADE.

DECISION OF THE BOARD: JUNE 12, 1972.

1. THE BOARD FINDS THAT THE INTERVENER IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. IN THIS MATTER TWO APPLICATIONS FOR CERTIFICATION WERE FILED, ONE BY THE APPLICANT AND ONE BY THE INTERVENER. PURSUANT TO THE BOARD'S DECISION DATED MAY 4, 1972, THE REGISTRAR WAS DIRECTED TO GIVE NOTICE TO THE EMPLOYEES OF THE INTERVENER'S APPLICATION FOR CERTIFICATION AND TO FIX A NEW TERMINAL DATE IN THIS MATTER.

3. THE APPLICANT HAD REQUESTED LEAVE TO WITHDRAW ITS APPLICATION AND WE RESERVED DECISION PENDING A FINAL DISPOSITION OF THESE MATTERS. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES AND SINCE THE APPLICANT REQUESTED LEAVE TO WITHDRAW ITS APPLICATION PRIOR TO THIS MATTER COMING ON FOR HEARING, THE BOARD IN ACCORDANCE WITH ITS USUAL PRACTICE GRANTS LEAVE TO THE APPLICANT TO WITHDRAW THE APPLICATION.

3. FURTHER, IN THIS MATTER A STATEMENT OF DESIRE WAS FILED BY A GROUP OF EMPLOYEES WHEREIN THEY SPECIFICALLY OBJECTED TO THE APPLICATION FOR CERTIFICATION BY THE APPLICANT TRADE UNION. SINCE THAT STATEMENT OF DESIRE WAS SPECIFICALLY DIRECTED AGAINST THE APPLICANT AND DOES NOT AFFECT THE INTERVENER'S APPLICATION FOR CERTIFICATION IT WILL NOT BE NECESSARY FOR THE BOARD TO CONDUCT ITS USUAL INQUIRY INTO THE ORIGIN AND CIRCULATION OF THE STATEMENT OF DESIRE.

4. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES AND TO THEIR EXISTING BARGAINING RELATIONSHIP AND TO THE PAST DECISIONS OF THIS BOARD WITH RESPECT TO DRAFTSMEN'S BARGAINING UNITS, THE BOARD FINDS THAT ALL DRAFTSMEN AND APPRENTICE DRAFTSMEN EMPLOYED BY THE RESPONDENT AT BRAMALEA, SAVE AND EXCEPT GROUP LEADERS AND PERSONS ABOVE THE RANK OF GROUP LEADER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BE-

FOR IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE INTERVENER ON MAY 17, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE INTERVENER.

7. SINCE FULL REPRESENTATIONS WERE MADE AT THE ORIGINAL HEARING WITH RESPECT TO ALL MATTERS AT ISSUE THE BOARD DID NOT DEEM IT NECESSARY TO HOLD A FURTHER HEARING SUBSEQUENT TO THE FIXING OF THE NEW TERMINAL DATE. IN THESE CIRCUMSTANCES WE ARE OF THE OPINION THAT THE PARTIES SHOULD BE GIVEN A FURTHER OPPORTUNITY TO MAKE REPRESENTATIONS IF THEY FEEL IT IS NECESSARY. ACCORDINGLY, SHOULD THE PARTIES WISH TO MAKE REPRESENTATIONS WITH RESPECT TO THIS DECISION THEY MAY DO SO IN WRITING PROVIDED THAT SUCH REPRESENTATIONS ARE RECEIVED BY THIS BOARD WITHIN SEVEN DAYS FROM THE DATE OF THE ISSUANCE OF THIS DECISION.

1570-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ST. THOMAS SANITARY COLLECTION SERVICE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: W.A. ACTON AND F. PYKE FOR THE APPLICANT; R.A. McCAIG FOR THE RESPONDENT; RON WHITCROFT FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: JUNE 12, 1972.

1. THE NAME "ST. THOMAS SANITARY COLLECTION SERVICE LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "ST. THOMAS SANITARY COLLECTIVE SERVICE LIMITED".

. . .

3. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES AND TO THE PREVIOUS BARGAINING HISTORY BETWEEN THE RESPONDENT AND THE ST. THOMAS SANITARY COLLECTIVE SERVICE LTD. EMPLOYEES ASSOCIATION, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS ST. THOMAS OPERATION, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. IN THIS CASE THERE WERE CERTAIN ALLEGATIONS OF NON-PAY MADE. THE BOARD ACCORDINGLY CONDUCTED ITS USUAL INVESTIGATION AND SUBSEQUENTLY A HEARING WAS ORDERED. THE EVIDENCE REVEALED THAT AT THE TIME CLARENCE EARHART SIGNED AN APPLICATION FOR MEMBERSHIP IN THE APPLICANT UNION HE DID NOT HAVE A DOLLAR AND REQUESTED A FELLOW EMPLOYEE TO LOAN HIM A DOLLAR AND INDICATED THAT HE WOULD REPAY THE DOLLAR. THE COLLECTOR WAS ANOTHER FELLOW EMPLOYEE. MR. EARHART INTENDED TO REPAY THE MONEY THAT WAS LOANED TO HIM; HOWEVER, HE STATED THAT WHEN HE SAW THE FELLOW EMPLOYEE HE DID NOT HAVE THE MONEY, BUT WHEN HE HAD THE MONEY HE DID NOT SEE HIM. HE FURTHER INDICATED THAT HE FELT HE WAS OBLIGATED TO REPAY THE DOLLAR.

5. IT FURTHER APPEARED THAT THE PERSON WHO SIGNED THE FORM ON BEHALF OF THE UNION MADE THE APPROPRIATE INQUIRIES OF THE EMPLOYEE COLLECTOR AND ACCORDINGLY THERE IS NOTHING IMPROPER ABOUT THE FILING OF THE FORM 8 IN THIS MATTER.

6. WE ARE SATISFIED IN THE CIRCUMSTANCES OF THIS CASE THAT A BONA FIDE LOAN WAS MADE BY ONE EMPLOYEE TO ANOTHER EMPLOYEE, AND WE DO NOT FIND ANYTHING IMPROPER IN THE EVIDENCE OF MEMBERSHIP SUBMITTED; SKENE CARTAGE COMPANY LIMITED [1966] OLRB REP. 30.

7. AT THE HEARING CERTAIN SUBMISSIONS WERE MADE WITH RESPECT TO A COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND ST. THOMAS SANITARY COLLECTION SERVICE LTD. EMPLOYEES ASSOCIATION. IT APPEARED THAT ON JULY 8, 1971, THE BOARD DISMISSED AN APPLICATION FOR CERTIFICATION BY THE CANADIAN UNION OF PUBLIC EMPLOYEES (HEREINAFTER REFERRED TO AS CUPE) ON THE BASIS THAT THE APPLICATION WAS UNTIMELY. WHILE THE REASONS OF THE BOARD ARE NOT GIVEN IN THE DECISION OF THAT DATE THE ONLY COGENT REASONS FOR DISMISSING THAT APPLICATION ON THE BASIS THAT IT WAS UNTIMELY IS BECAUSE THERE WAS A COLLECTIVE AGREEMENT IN EXISTENCE. IN ORDER FOR THAT COLLECTIVE AGREEMENT TO HAVE BEEN IN EXISTENCE IT MUST HAVE BEEN BETWEEN THE RESPONDENT COMPANY AND A TRADE UNION REPRESENTING EMPLOYEES. SECTION 1(1)(E) OF THE LABOUR RELATIONS ACT. IT FURTHER APPEARED THAT THAT TRADE UNION WAS THE ST. THOMAS SANITARY COLLECTION SERVICE LTD. EMPLOYEES ASSOCIATION (HEREINAFTER REFERRED TO AS THE ASSOCIATION), AND THAT ASSOCIATION CONTINUED IN EXISTENCE AND CONTINUED BARGAINING WITH THE COMPANY UNTIL FEBRUARY 1972 WHICH WAS JUST PRIOR TO THE INSTANT APPLICATION HAVING BEEN MADE. MR. PYKE, WHO WAS CALLED AS A WITNESS BY THE APPLICANT TRADE UNION, TESTIFIED THAT HE ATTENDED A MEETING OF THE ASSOCIATION AT WHICH SOME MEMBERS INDICATED THAT THEY WERE GOING TO JOIN THE APPLICANT TRADE UNION CUPE. THAT EVIDENCE DOES NOT GO SO FAR AS TO INDICATE THAT THE ASSOCIATION HAS DISABANDED NOR ARE WE ABLE TO FIND FROM THE FACTS THAT THE ASSOCIATION HAS ABANDONED ITS BARGAINING RIGHTS.

8. ALTHOUGH ALL THE PARTIES HAVE AGREED THAT THERE BE A REPRESENTATION VOTE WITH ONLY THE NAME OF THE APPLICANT TRADE UNION APPEARING ON THE BALLOT WE ARE OF THE OPINION THAT THE EMPLOYEES SHOULD BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE ASSOCIATION. WE ARE NOT PREPARED TO BE TOO QUICK TO SET ASIDE BARGAINING RIGHTS ONCE THEY HAVE BEEN GAINED.

. . .

10. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

11. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT, CANADIAN UNION OF PUBLIC EMPLOYEES, OR THE ST. THOMAS SANITARY COLLECTIVE SERVICE LTD. EMPLOYEES ASSOCIATION.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

1796-71-U: LOCAL UNION 3219 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. THE BOARD OF EDUCATION FOR THE BOROUGH OF NORTH YORK (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: L. A. MACLEAN AND W. MISSEN FOR THE APPLICANT; A. J. CLARK, Q.C., AND T. M. PARK FOR THE RESPONDENT.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE: JUNE 13, 1972.

1. THE APPLICANT IS APPLYING TO THE BOARD FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT FOR AN ALLEGED VIOLATION OF SECTION 70(1) OF THE LABOUR RELATIONS ACT. THE RESPONDENT SUBMITS THAT THE BOARD SHOULD REFUSE TO ISSUE ITS CONSENT TO THE INSTITUTION OF THE SAID PROSECUTION.

2. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE RESPONDENT IN SUPPORT OF THEIR RESPECTIVE POSITIONS. THE BOARD HAS ALSO REVIEWED THE DECISIONS CITED BY COUNSEL IN THEIR SUBMISSIONS. APPLYING THE FOREGOING TO THE CIR-

CUMSTANCES OF THE INSTANT CASE AS REVEALED BY THE EVIDENCE AND HAVING PARTICULAR REGARD TO THE DECISIONS OF THE BOARD IN THE GOVERNOR AND COMPANY OF ADVENTURERS OF ENGLAND TRADING INTO HUDSON'S BAY, OPERATING AS HUDSON'S BAY COMPANY CASE OLRB M.R. DECEMBER 1968 P. 944; SCARBOROUGH CENTENARY HOSPITAL CASE OLRB M.R. JANUARY 1969 P. 1049; FRANKLIN MANUFACTURING COMPANY (CANADA) LIMITED CASE OLRB M.R. JUNE 1970 P. 341 AND (THE CORPORATION OF) THE BOARD OF GOVERNORS OF THE RIVERSIDE HOSPITAL CASE OLRB M.R. FEBRUARY 1971, P. 91, WE ARE SATISFIED THAT THERE ARE ISSUES OF LAW AND FACT THAT HAVE BEEN RAISED WHICH MIGHT PROPERLY BE DETERMINED BY A PROVINCIAL JUDGE.

3. WE ACCORDINGLY CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT THE BOARD OF EDUCATION FOR THE BOROUGH OF NORTH YORK DID NOT GRANT WAGE INCREASES TO TWO ASBESTOS MECHANICS IN ITS EMPLOY, NAMELY A. V. PROSS AND I. NORDONE, ON JANUARY 3, 1972 AS PROVIDED FOR IN THE METROPOLITAN TORONTO FAIR WAGE SCHEDULE CITED IN ARTICLE 22.02 OF THE COLLECTIVE AGREEMENT ENTERED INTO BY THE APPLICANT AND THE RESPONDENT ON JANUARY 1, 1970, IN CONTRAVENTION OF SECTION 70(1) OF THE LABOUR RELATIONS ACT.

4. THE APPROPRIATE DOCUMENTS WILL ISSUE PURSUANT TO THE PROVISIONS OF SECTION 90 OF THE ACT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: JUNE 13, 1972.

HAVING REGARD TO THE JUDGMENT OF HIS HONOUR JUDGE WILLIAM F. SCHWENGER IN REGINA VS CANADIAN GENERAL ELECTRIC Co. LTD. [1961] OWN 117, I WOULD HAVE DISMISSED THE PRESENT APPLICATION.

WITH GREAT RESPECT, HOWEVER, WHILE I AM PERSONALLY DISPLEASED IN ABDICATING MY POWER IN FAVOUR OF THE PROVINCIAL JUDGE, I AM PREPARED TO CONCEDE THAT THE PRESENT POLICY OF THE BOARD IS THAT WHEN THERE ARE ISSUES OF LAW AND FACT WHICH HAVE BEEN RAISED, SUCH ISSUES ARE TO BE DETERMINED BY A PROVINCIAL JUDGE.

I AGREE ALSO THAT SUCH POLICY IS REFLECTED IN SUCH DECISIONS AS FRANKLIN MANUFACTURING COMPANY (CANADA) LIMITED CASE OLRB M.R. JUNE 1970 P. 341 AND (THE CORPORATION OF) THE BOARD OF GOVERNORS OF THE RIVERSIDE HOSPITAL CASE OLRB M.R. FEBRUARY 1971 P. 91, AS CITED BY MY COLLEAGUES.

2067-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) v. NOR-PIPE CONSTRUCTION LIMITED (RESPONDENT).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS H.J.F. ADE
AND E. BOYER.

DECISION OF THE BOARD: JUNE 13, 1972.

1. THE NAME "NOR-PIPE CONSTRUCTION LTD." APPEARING IN THE STYLE
OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED
TO READ: "NOR-PIPE CONSTRUCTION LIMITED".

. . .

6. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CER-
TIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS
ACT.

7. IN PARAGRAPH 14(2) OF ITS REPLY THE RESPONDENT HAS STATED:

"THE RESPONDENT REQUESTS THAT ALL FOREMEN
AND THOSE ABOVE THE RANK OF FOREMEN BE
EXCLUDED. ALTHOUGH THERE ARE NO FOREMEN
WITH AUTHORITY EXCLUSIVELY OVER THE
OPERATORS AND THOSE ENGAGED IN THE
REPAIRING AND MAINTAINING OF THE SAME.
THERE ARE FOREMEN WITH JURISDICTION THAT
ARE OCCASIONALLY CALLED UPON TO OPERATE
EQUIPMENT WHEN NECESSARY AND IN EMERGENCIES."

8. IT IS THE USUAL PRACTICE OF THE BOARD IN DEFINING THE BAR-
GAINING UNIT IN THE CONSTRUCTION INDUSTRY TO DRAW THE LINE OF EXCLU-
SION AT THE LEVEL OF NON-WORKING FOREMEN. THIS IS BASED UPON THE EX-
PERIENCE OF THE BOARD OVER MANY YEARS THAT IN THE CONSTRUCTION INDUSTRY,
WORKING FOREMEN DO NOT NORMALLY EXERCISE MANAGERIAL FUNCTIONS WHEREAS
NON-WORKING FOREMEN USUALLY DO EXERCISE MANAGERIAL FUNCTIONS. THE RE-
SPONDENT HAS NOT SUGGESTED THAT THE FOREMEN THAT IT SEEKS TO EXCLUDE
FROM THE PROPOSED BARGAINING UNIT EXERCISE MANAGERIAL FUNCTIONS. IN
OUR VIEW THE MATTERS RAISED BY THE RESPONDENT IN PARAGRAPH 14(2) OF ITS
REPLY ARE MORE APPROPRIATELY MATTERS FOR COLLECTIVE BARGAINING BETWEEN
THE PARTIES.

9. HAVING REGARD TO THE FOREGOING AND IN THE CIRCUMSTANCES OF
THIS APPLICATION THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE
RESPONDENT IN THE TOWNSHIPS OF FIELD, BASTEDO, McLAREN, THISTLE, SISK
AND MCCALLUM AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO (EX-
CEPT THAT AREA ENCOMPASSED WITHIN A TWENTY MILE RADIUS OF THE NORTH

BAY POST OFFICE) ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULL-DOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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1779-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. ATOMIK CONSTRUCTION COMPANY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

APPEARANCES AT THE HEARING: J. SACK, J. C. HORAN AND P. J. DUPONT FOR THE APPLICANT; J. E. LANGLOIS FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 14, 1972.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE BOARD DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. FOLLOWING THE TAKING OF THE VOTE, IN WHICH 14 OUT OF 25 PERSONS WHO CAST BALLOTS VOTED IN FAVOUR OF THE APPLICANT, THE RESPONDENT FILED NOTICE OF OBJECTION WHEREIN IT OBJECTED TO THE CERTIFICATION OF THE APPLICANT ON THE GROUNDS THAT ONE OF THE RESPONDENT'S FOREMEN INFLUENCED AND COERCED THE EMPLOYEES BY SUGGESTING TO THEM THAT THEY SHOULD JOIN AND VOTE FOR THE UNION.

2. ALTHOUGH THE EVIDENCE IN THIS CASE CLEARLY ESTABLISHED THAT THE FOREMAN ENGAGED IN PROPAGANDA IN SUPPORT OF THE UNION, WE ARE SATISFIED ON ALL THE EVIDENCE THAT HIS SUPPORT WAS VOLUNTEERED AND THAT THE UNION HAD NO KNOWLEDGE OF HIS SUPPORT NOR DID THE UNION SOLICIT OR ENCOURAGE HIS SUPPORT.

3. SINCE THE EVIDENCE ESTABLISHED THAT THE PRESIDENT AND GENERAL MANAGER OF THE COMPANY MADE THEIR POSITION WITH RESPECT TO THE UNION CLEARLY KNOWN TO THE EMPLOYEES AND INDEED INVITED THE EMPLOYEES TO VOTE AGAINST THE APPLICANT, WE FIND THAT ANY SUPPORT GIVEN BY THE FOREMAN TO THE APPLICANT WOULD BE CLEARLY RECOGNIZED BY THE EMPLOYEES AS BEING AGAINST THE WISHES OF THE RESPONDENT'S OFFICIALS. THE FOREMAN'S ACTIONS WERE SUCH THAT THE EMPLOYEES WOULD RECOGNIZE THAT HE WAS ALIGNING HIMSELF WITH THE EMPLOYEES AGAINST THE RESPONDENT.

4. FOR REASONS SIMILAR TO THE REASONS ENUNCIATED BY THE BOARD IN THE AIR LIQUIDE CASE, 64 CLLC 9116,002, THE MILLWORK AND BUILDING SUPPLIES COMPANY LIMITED CASE, OLRB MONTHLY REPORT, JUNE 1968, P.

273, AND THE ACME RULER COMPANY LIMITED CASE, OLRB MONTHLY REPORT, NOVEMBER 1969, P. 952, WE FIND THAT THE ACTIVITIES OF THE FOREMAN, HAVING BEEN PLACED IN THEIR PROPER PERSPECTIVE BY THE ACTIONS OF THE RESPONDENT'S PRESIDENT, WOULD NOT UNDULY AFFECT THE TRUE WISHES OF THE EMPLOYEES AS REFLECTED IN THE REPRESENTATION VOTE CONDUCTED IN THIS MATTER. WE ARE THEREFORE NOT PREPARED TO SET ASIDE THE RESULTS OF THE VOTE.

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8. ON THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE DIRECTED BY THE BOARD MORE THAN FIFTY PER CENT OF THE BALLOTS CAST WERE CAST IN FAVOUR OF THE APPLICANT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

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1621-71-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. SHERMAN SUPERSONIC INDUSTRIES (CANADA) LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: L. INGLE FOR THE APPLICANT; L. S. CRACKOWER FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 14, 1972.

1. THIS IS A COMPLAINT FILED UNDER THE PROVISIONS OF SECTION 79 OF THE LABOUR RELATIONS ACT WHEREIN THE COMPLAINANT ALLEGES THAT ON OR ABOUT FEBRUARY 15, 1972, THE AGGRIEVED PERSONS, PETER REICHELTS AND JENS MOHR, WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 58(A) OF THE SAID ACT.

2. THE EVIDENCE OF THE AGGRIEVED PERSON, REICHELTS, DISCLOSES THAT HE WAS EMPLOYED BY THE RESPONDENT AS AN ELECTRICIAN SINCE APRIL 24, 1967. HE FURTHER STATED THAT HE JOINED THE COMPLAINANT ON JUNE OF 1971 AND ASSISTED IN ITS ORGANIZATIONAL CAMPAIGN WHICH ULTIMATELY LED TO ITS CERTIFICATION ON JULY 20, 1971, ON BEHALF OF CERTAIN EMPLOYEES OF THE RESPONDENT. (BOARD FILE NO. 665-71-R). ALTHOUGH THE WITNESS CLAIMED THAT HE WAS INSTRUMENTAL IN BRINGING THE UNION INTO THE PLANT AND BECAME AN ALTERNATE MEMBER OF THE BARGAINING COMMITTEE, HE DID CONCEDE UPON CROSS-EXAMINATION, THAT HE NEVER SAT IN THIS LATTER CAPACITY AT ANY MEETINGS WITH THE RESPONDENT.

3. THE WITNESS FURTHER TESTIFIED THAT ON FEBRUARY 15, 1972, HE ALONG WITH JENS MOHR WERE CALLED INTO THE OFFICE OF D. KEKEWICH, THE PRESIDENT OF THE RESPONDENT WHO INFORMED THEM THAT AFTER QUESTIONING SOME OF HIS EMPLOYEES HE DISCOVERED THAT, IN THE WORDS OF THE WITNESS, "MOHR AND ME ARE THE ONLY TROUBLEMAKERS IN THE COMPANY AND THAT WE WAS PHONING NEWSPAPER, T.V. AND RADIO STATIONS AND THAT WE WAS THREATENING PEOPLE AND THAT WE BROUGHT THE UNION INTO THE PLANT." THE WITNESS STATED THAT THEY WERE FURTHER INFORMED THAT AS A RESULT THEY WOULD BE TEMPORARILY RELEASED FROM WORK PENDING A FINAL DECISION IN THE MATTER AND THAT THEY WOULD BE SUBSEQUENTLY INFORMED OF THEIR STATUS. THEY WERE THEN HANDED CHEQUES AND THEIR UNEMPLOYMENT INSURANCE BOOKS AND ADVISED THAT THEY COULD LEAVE IMMEDIATELY IF THEY SO WISHED.

4. THE EVIDENCE OF THE AGGRIEVED PERSON, MOHR, DISCLOSES THAT UPON BEING SUMMONED WITH REICHELT TO THE PRESIDENT'S OFFICE ON FEBRUARY 15, 1972, HE WAS TOLD BY KEKEWICH THAT "WE WERE BOTH TROUBLEMAKERS IN THE COMPANY AND THAT WE PHONED THE NEWSPAPERS AND RADIO AND GAVE HIM ALL THE TROUBLES TO GET THE UNION INTO THE COMPANY". THE WITNESS FURTHER STATED THAT HE JOINED THE COMPLAINANT IN JUNE OF 1971 BUT HELD NO UNION OFFICE. THE WITNESS STATED UPON CROSS-EXAMINATION THAT HE WAS PROMOTED IN DECEMBER OF 1971 TO LEAD HAND BUT DID CONCEDE THAT THE RESPONDENT HAD POSTED A NOTICE ON THE PLANT PREMISES TO THE EFFECT THAT HE WAS DESIGNATED AS FOREMAN. IN THIS REGARD THE WITNESS STATED THAT DURING THE DISCUSSION WITH KEKEWICH, THE LATTER HAD AGREED THAT HE COULD REMAIN IN THE UNION.

5. BOTH AGGRIEVED PERSONS FURTHER TESTIFIED TO THE EFFECT THAT APPROXIMATELY 1 WEEK PRIOR TO THEIR TERMINATIONS, THEY OBSERVED EMPLOYEES GOING IN AND OUT OF KEKEWICH'S OFFICE. IT IS RELEVANT TO NOTE AT THIS POINT THAT BOTH OF THESE EMPLOYEES ARE OF GERMAN ORIGIN. THE RESPONDENT ALSO HAS IN ITS EMPLOY PERSONS OF KOREAN, ITALIAN AND GREEK ORIGIN.

6. A FURTHER MATTER TO BE NOTED IN THESE PROCEEDINGS IS THAT ALTHOUGH BARGAINING HAS ENSUED BETWEEN THE COMPLAINANT AND RESPONDENT FOLLOWING CERTIFICATION, THE PARTIES HAVE NOT AS YET BEEN SUCCESSFUL IN NEGOTIATING A FIRST COLLECTIVE AGREEMENT. FURTHER, BY LETTER DATED OCTOBER 13, 1971, THE PARTIES HAVE BEEN ADVISED THAT THE MINISTER HAS DECIDED NOT TO APPOINT A CONCILIATION BOARD IN REFERENCE TO THE MATTERS IN DISPUTE BETWEEN THEM.

7. THE RESPONDENT, IN DEFENCE, ADDUCED EVIDENCE TO THE EFFECT THAT SHORTLY PRIOR TO THE TIME OF THE DISMISSALS OF THE AGGRIEVED PERSONS, IT WAS DECIDED TO CONDUCT AN INQUIRY IN THE PLANT AS A RESULT OF A CERTAIN GENERAL FEELING OF DISCONTENT

EXHIBITED BY THE EMPLOYEES AT THIS TIME. IN ORDER TO DETERMINE THE SOURCE OF THE PROBLEM, MR. KEKEWICH, CONDUCTED INDIVIDUAL INTERVIEWS IN THE COMPANY OF MR. PARSONS, THE SERVICE MANAGER AT THE TIME, WITH CERTAIN OF THE EMPLOYEES.

8. IN THIS REGARD THE RESPONDENT CALLED KOOK CHUNG, A MEMBER OF THE COMPLAINANT'S NEGOTIATING COMMITTEE WHO TESTIFIED TO THE EFFECT THAT ALTHOUGH BOTH REICHELT AND MOHR WERE INSTRUMENTAL IN PERSUADING THE EMPLOYEES TO JOIN THE UNION EARLY IN SEPTEMBER OF 1972, THEY SUBSEQUENTLY REVERSED THEIR POSITIONS IN THIS REGARD AND NOT ONLY BECAME REMISS IN ATTENDING UNION MEETINGS BUT MOREOVER ACTIVELY CAMPAIGNED AGAINST IT. A FELLOW UNION MEMBER EMPLOYED BY THE RESPONDENT AS A MACHINIST, ANGELO PAPADOKAS, TESTIFIED THAT ON FEBRUARY 11, 1972, HE HAD ADVISED KEKEWICH THAT REICHELT AND MOHR, WHO WERE LOOKED UPON BY THE REMAINDER OF THE EMPLOYEES AS FOREMEN OR LEAD HANDS, HAD CREATED A PROBLEM IN THE PLANT IN THAT THE EMPLOYEES FELT THAT THESE TWO INDIVIDUALS HAD "SOMETHING AGAINST THEM". ON THIS NOTE, ANOTHER MEMBER OF THE NEGOTIATING COMMITTEE, FRANK MONDELLI TESTIFIED THAT HE ADVISED KEKEWICH THAT THE "CAUSE OF ANGER IN THE PLANT WAS THAT THERE WERE MANY NATIONS THERE AND HE (KEKEWICH) GAVE TOO MUCH POWER TO ONE NATION - THEY WERE TREATED BETTER AND THE OTHER PEOPLE RESENT THEM".

9. THE EVIDENCE OF MR. KEKEWICH DISCLOSES THAT AS A RESULT OF THE INTERVIEW WITH THE EMPLOYEES, HE BECAME CONVINCED THAT THE CAUSE OF THE TROUBLE IN THE PLANT CENTRED AROUND THE ACTIVITIES OF THE TWO AGGRIEVED PERSONS. IN ADDITION TO THE MATTERS DISCUSSED ABOVE, HE INDICATED THAT OTHER MATTERS WERE BROUGHT TO HIS ATTENTION WHICH INCLUDED: THE PRACTICE OF THE AGGRIEVED PERSON IN JOKINGLY ENGAGING IN THE EXCHANGE OF NAZI SALUTES TO THE CONSTERNATION OF THE EMPLOYEES ESPECIALLY TO MEMBERS OF CERTAIN MINORITY GROUPS; REICHELT'S EXPRESSED DEFIANCE OF THE PLANT RULES REQUIRING THE WEARING OF SAFETY EQUIPMENT IN CERTAIN CIRCUMSTANCES IN THE FACE OF SALVATOR IANNUZZI'S EVIDENCE TO THE EFFECT THAT HE HIMSELF WAS DISCHARGED FOR SUCH ACTION; VARIOUS THREATS ENGAGED IN BY BOTH AGGRIEVED PERSONS TO CERTAIN EMPLOYEES EITHER DIRECTLY OR INDIRECTLY; THE RIDICULE THEY DIRECTED TOWARDS CERTAIN EMPLOYEES WHEN THE LATTER WERE REQUIRED TO UNLOAD TRUCKS OUTSIDE IN THE WINTER; DEROGATORY REMARKS TOWARD CERTAIN EMPLOYEES OF FOREIGN EXTRACTION AND CERTAIN EVENTS SURROUNDING THE QUITTING BY AN EMPLOYEE NAMED KIM.

10. MR. KEKEWICH TESTIFIED THAT AS A RESULT HE CALLED BOTH AGGRIEVED PERSONS INTO HIS OFFICE ON FEBRUARY 15, 1972, AND IN HIS WORDS STATED "I HAD THEIR FULL PAYS MADE UP INCLUDING VACATION PAY AND SEVERENCE PAY. I EXPLAINED TO THEM THAT WE HAD NOTICED

FOR SOME TIME THE DETERIORATION OF THE SHOP MORALE AND THAT I HAD CONDUCTED INTERVIEWS WITH ENOUGH OF THE KEY PERSONNEL AND THAT I CAME TO THE DECISION THAT YOU TWO ARE NOTHING BUT ---- DISTURBERS AND THAT I AM TERMINATING YOUR EMPLOYMENT AS OF THIS DAY. I TOLD THEM THEY WOULD BE PAID FOR THE FULL DAY, BUT THAT THEY COULD LEAVE AT ANY TIME WHICH THEY DID." THE WITNESS THEN TESTIFIED HE WENT OVER "THE WHOLE BALL OF WAX" CONCERNING THE REASON FOR THEIR DISCHARGE AND AT NO TIME WAS THE WORD "UNION" EVEN MENTIONED. AS REGARDS THE POSSIBILITY OF A FUTURE MEETING BETWEEN THEM, THE WITNESS STATED THIS AROSE IN CONNECTION WITH A REQUEST BY REICHELT THAT THE EMPLOYEES BE PERMITTED TO MAKE THEIR CHARGES AGAINST HIM TO HIS FACE. IN RESPONSE THERETO, THE WITNESS STATED: "I EXPLAINED TO THEM THAT SOME OF THESE MEN WERE AFRAID OF PETER (REICHELT), BUT THAT I WOULD INVESTIGATE THE CHARGES FURTHER AND IF I FOUND ANY OF THE EMPLOYEES LYING, I WOULD LET THEM KNOW ABOUT IT."

11. IN THESE PROCEEDINGS, WE ARE NOT ASKED TO DETERMINE WHETHER WE WOULD REACH THE SAME CONCLUSIONS AS THOSE OF MR. KEKEWICH FOR THE REASONS HE GAVE. EVEN ASSUMING THE EVIDENCE WARRANTED A FINDING THAT THESE REASONS AMOUNTED TO JUST CAUSE FOR DISMISSAL, IT IS NOT OUR FUNCTION TO DECIDE THE ISSUE. AS WAS STATED BY THE BOARD IN THE WESTERN BAKERIES LIMITED CASE [1971] OLRB REP. P. 30 AT PAGE 34:

"IN COMPLAINTS BROUGHT UNDER SECTION 65, (NOW SECTION 79), THE PRIMARY QUESTION BEFORE THE BOARD IS NOT WHETHER THERE WAS JUST CAUSE FOR DISCHARGE BUT WHETHER THE PERSON COMPLAINING WAS DEALT WITH CONTRARY TO THE PROVISION OF THE ACT."

12. HAVING CAREFULLY REVIEWED ALL OF THE EVIDENCE IN THIS REGARD WE THEREFORE FIND THAT THE COMPLAINANT HAS FAILED TO SATISFY US ON THE BALANCE OF PROBABILITIES, THAT THE AGGRIEVED PERSONS, PETER REICHELT AND JENS MOHR, WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 58(A) OF THE LABOUR RELATIONS ACT AND THIS APPLICATION IS ACCORDINGLY DISMISSED.

566-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. SIVI CONSTRUCTION LIMITED (RESPONDENT) v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 172 (INTERVENER).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFFE.

DECISION OF THE BOARD:

JUNE 14, 1972.

1. IN A DECISION IN THIS MATTER DATED MARCH 9, 1972, THE BOARD HELD THAT THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 172 (HEREINAFTER REFERRED TO AS "LOCAL 172") DID NOT HAVE STATUS TO INTERVENE IN THIS PROCEEDING AND DISMISSED THE INTERVENTION OF LOCAL 172.
2. IN A DECISION IN THIS MATTER DATED APRIL 18, 1972, THE BOARD DENIED MOTIONS ADVANCED BY COUNSEL FOR THE RESPONDENT AND BY COUNSEL FOR LOCAL 172 AND FOR CERTAIN EMPLOYEES.
3. IN A LETTER RECEIVED BY THE BOARD ON APRIL 27, 1972, COUNSEL FOR LOCAL 172 AND FOR CERTAIN EMPLOYEES ASKED THE BOARD TO RECONSIDER ITS DECISION DATED APRIL 18, 1972. COUNSEL ALLEGED THAT THERE HAD BEEN A DENIAL OF NATURAL JUSTICE TO "THE EMPLOYEES" BY THE BOARD. IN THE SAME LETTER COUNSEL REQUESTED THE BOARD TO SET A NEW TERMINAL DATE.
4. IN A FURTHER LETTER RECEIVED BY THE BOARD ON MAY 23, 1972, COUNSEL FOR LOCAL 172 AND FOR CERTAIN EMPLOYEES AGAIN ASKED THAT A NEW TERMINAL DATE BE SET BY THE BOARD OR THAT THE BOARD ALLOW LOCAL 172 TO FILE PROOF OF MEMBERSHIP.
5. THE BOARD HAS CONSIDERED THE MATTERS RAISED BY COUNSEL FOR LOCAL 172 AND FOR CERTAIN EMPLOYEES TOGETHER WITH THE REPRESENTATIONS OF THE PARTIES TO THIS PROCEEDING.
6. IN ALL OF THE CIRCUMSTANCES OF THIS APPLICATION, THE BOARD SEES NO REASON TO RECONSIDER ITS DECISION IN THIS MATTER DATED APRIL 18, 1972. WITH RESPECT TO THE ALLEGATION OF A DENIAL OF NATURAL JUSTICE, THE BOARD NOTES THAT "THE EMPLOYEES" (EVEN ASSUMING FOR THE PURPOSE OF ARGUMENT THAT THEY WERE EMPLOYEES OF THE RESPONDENT AT THE RELEVANT TIME) HAD AN OPPORTUNITY TO MAKE THEIR ALLEGATIONS TO THE BOARD BUT FAILED TO DO SO. IN ALL THE CIRCUMSTANCES THERE WAS NO DENIAL OF NATURAL JUSTICE BY THE BOARD.
7. THE REQUESTS TO EXTEND THE TERMINAL DATE IN THIS APPLICATION HAVE BEEN MADE SOME TEN MONTHS AFTER THE TERMINAL DATE IN THIS APPLICATION. THE EXTENSION OF A TERMINAL DATE IN AN APPLICATION IS MADE BY THE BOARD IN INSTANCES WHERE GOOD AND SUFFICIENT CAUSE IS SHOWN. THE TERMINAL DATE OUGHT NOT TO BE EXTENDED IN THE CIRCUMSTANCES OF THIS APPLICATION WHERE THE APPLICANT WILL BE SEVERELY PREJUDICED. SIMILARLY, A TERMINAL DATE OUGHT NOT TO BE EXTENDED FOR THE PURPOSE OF PERMITTING COUNSEL FOR LOCAL 172 AND FOR CERTAIN EMPLOYEES TO REPAIR THE

DEFICIENCIES OF HIS CASE. IN THE RESULT, THE REQUEST THAT THE TERMINAL DATE IN THIS MATTER BE EXTENDED IS DENIED.

8. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING.

1727-71-R: CANADIAN TEXTILE & CHEMICAL UNION (APPLICANT) V. PURETEX KNITTING CO. LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H. ADE AND O. HODGES.

APPEARANCES AT THE HEARING: N. ENDICOTT, F. PARK, R. K. ROWLEY AND W. SPIRA FOR THE APPLICANT; E. L. STRINGER, Q.C., R. A. MACDERMID, G. SATOK, L. CAPPE AND D. BRISBIN FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 15, 1972.

1. THE APPLICANT HAS APPLIED TO THE BOARD FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO.

2. THE INITIAL HEARING OF THE APPLICATION WAS HELD BY THE BOARD ON APRIL 10, 1972. BY LETTER DATED MARCH 21, 1972, THE SOLICITORS FOR THE RESPONDENT FILED CERTAIN CHARGES ALLEGING THAT THE APPLICANT HAD ENGAGED IN IMPROPER ORGANIZATIONAL ACTIVITIES DURING ITS ORGANIZING CAMPAIGN. AT THE HEARING ON APRIL 10TH, COUNSEL FOR THE RESPONDENT WITHDREW THE SAID CHARGES WHICH HE HAD MADE AGAINST THE APPLICANT.

3. AT THE SAME TIME THAT COUNSEL FOR THE RESPONDENT WITHDREW THE ABOVE REFERRED TO CHARGES HE ADVISED THE BOARD THAT HE WISHED TO FILE AN ALLEGATION OF IMPROPRIETY WITH RESPECT TO THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN SUPPORT OF ITS APPLICATION. THE REPRESENTATIVE OF THE APPLICANT AT THE HEARING OBJECTED TO COUNSEL FOR THE RESPONDENT BEING PERMITTED TO FILE SUCH AN ALLEGATION SUBSEQUENT TO THE TERMINAL DATE. THE BOARD RULED THAT IT WOULD PERMIT COUNSEL FOR THE RESPONDENT TO FILE HIS ALLEGATION AT THAT POINT IN THE PROCEEDINGS AS THE BOARD HAD TO BE SATISFIED THAT THE EVIDENCE OF MEMBERSHIP MET THE BOARD'S REQUIREMENTS. ON THE INSTRUCTION OF THE BOARD COUNSEL FILED HIS ALLEGATION IN WRITING AT THE HEARING. THE ALLEGATION MADE BY COUNSEL FOR THE RESPONDENT WAS THAT A NAMED EMPLOYEE FOR WHOM THE APPLICANT HAD FILED A MEMBERSHIP CARD HAD PAID HIS MEMBERSHIP FEE TO A PERSON OTHER THAN THE PERSON INDICATED AS THE COLLECTOR ON HIS MEMBERSHIP CARD. THE BOARD AT THE HEARING ADVISED THE REPRESENTATIVE OF THE APPLICANT AS TO THE

NATURE OF THE RESPONDENT'S ALLEGATION. THE BOARD FURTHER ADVISED THE PARTIES AT THE HEARING ON APRIL 10TH THAT FOLLOWING ITS USUAL PRACTICE THE BOARD WOULD MAKE ITS OWN INITIAL INVESTIGATION INTO THE ALLEGATION AND THAT IF, AS A RESULT OF ITS INQUIRY THERE APPEARED TO BE SOME SUBSTANCE TO THE ALLEGATION, THE PARTIES WOULD BE SO NOTIFIED AND THAT THE APPLICATION WOULD BE RELISTED FOR A HEARING WITH RESPECT TO THE ALLEGED DEFECT IN THE SAID MEMBERSHIP CARD SUBMITTED BY THE APPLICANT. THE BOARD FURTHER ADVISED THE PARTIES THAT IF THE BOARD'S OWN INQUIRIES REVEALED NO SUBSTANCE TO THE ALLEGATION, THE BOARD WOULD MAKE ITS DISPOSITION OF THE APPLICATION ON THE BASIS OF THE EVIDENCE BEFORE IT.

4. IMMEDIATELY AFTER THE HEARING ON APRIL 10TH, THE BOARD INSTRUCTED ONE OF ITS EXAMINERS TO INTERVIEW THE EMPLOYEE NAMED BY THE RESPONDENT IN ITS ALLEGATION, NAMELY ONE NICK NOZUYE. MR. NOZUYE GAVE A SIGNED STATEMENT TO THE BOARD'S EXAMINER IN WHICH HE STATED INTER ALIA THAT HE DID NOT PAY A ONE DOLLAR INITIATION FEE AT THE TIME HE SIGNED THE APPLICATION FOR MEMBERSHIP CARD IN THE APPLICANT TRADE UNION BUT THAT HE DID SUBSEQUENTLY PAY THE SAID FEE. ACCORDING TO HIS STATEMENT, HOWEVER, MR. NOZUYE DID NOT MAKE THE PAYMENT OF THE INITIATION FEE TO THE PERSON SHOWN AS COLLECTOR ON THE APPLICATION FOR MEMBERSHIP SUBMITTED TO THE BOARD BY THE APPLICANT ON HIS BEHALF.

5. HAVING REGARD TO THE SIGNED STATEMENT MADE BY MR. NOZUYE WHICH LENT SUPPORT TO THE ALLEGATION MADE AT THE APRIL 10TH HEARING BY COUNSEL FOR THE RESPONDENT, ON THE INSTRUCTION OF THE BOARD, THE REGISTRAR SENT A LETTER DATED APRIL 21, 1972 TO BOTH THE APPLICANT AND THE RESPONDENT, THE BODY OF WHICH READS IN PART:

AT THE HEARING OF THIS APPLICATION THE RESPONDENT FILED WITH THE BOARD AN ALLEGATION OF IMPROPRIETY AS TO THE MANNER IN WHICH THE INITIATION FEE WAS PAID WITH REGARD TO A MEMBERSHIP CARD SUBMITTED BY THE APPLICANT.

THE BOARD HAS CONDUCTED A PRELIMINARY INVESTIGATION REGARDING THE IMPROPRIETY ALLEGED BY THE RESPONDENT.

FURTHER TO ITS INVESTIGATION, THE BOARD INTENDS TO CONDUCT A HEARING IN THIS CASE, AT WHICH AN INQUIRY WILL BE MADE INTO THE CIRCUMSTANCES UNDER WHICH THE INITIATION FEE RELATING TO THE APPLICATION FOR MEMBERSHIP WAS PAID BY NICK NOZUYE. MORE PARTICULARLY, THE BOARD WILL INQUIRE INTO THE ALLEGATION THAT NICK NOZUYE DID NOT, IN FACT, PAY THE \$1.00 FEE SHOWN ON

THE APPLICATION FOR MEMBERSHIP SUBMITTED BY THE APPLICANT ON HIS BEHALF TO WILLIAM SPIRA, THE PERSON SHOWN ON THE MEMBERSHIP CARD AS THE COLLECTOR, AND NO EXCEPTIONS ARE LISTED TO PARAGRAPH 3 OF THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 8) SIGNED BY R. K. ROWLEY, WHICH WAS FILED BY THE APPLICANT.

BY A NOTICE OF HEARING OF THE SAME DATE THE PARTIES WERE ADVISED OF A CONTINUATION OF HEARING OF THE APPLICATION BY THE BOARD FOR THE REASONS SET OUT IN THE REGISTRAR'S LETTER DATED APRIL 21, 1972. THE SAID HEARING WAS SCHEDULED FOR 1:00 P.M. ON FRIDAY, APRIL 28, 1972.

6. AT THE OUTSET OF THE HEARING ON APRIL 28, 1972, THE BOARD ADVISED THE PARTIES THAT IT PROPOSED TO INQUIRE INTO THE MATTERS SET OUT IN THE REGISTRAR'S LETTER OF APRIL 21ST. AT THIS POINT, COUNSEL FOR THE APPLICANT OBJECTED THAT THE RESPONDENT HAD NO STATUS TO PARTICIPATE IN THE INQUIRY. AFTER ENTERTAINING THE REPRESENTATIONS OF COUNSEL, THE BOARD RULED THAT THE RESPONDENT WAS ENTITLED TO PARTICIPATE IN ALL PROCEEDINGS RELATING TO THE APPLICATION INCLUDING THE CIRCUMSTANCES UNDER WHICH THE INITIATION FEE RELATING TO THE APPLICATION FOR MEMBERSHIP SUBMITTED BY THE APPLICANT FOR NICK NOZUYE WAS PAID.

7. COUNSEL FOR THE APPLICANT THEREUPON RAISED A FURTHER OBJECTION, NAMELY THAT THE BOARD SHOULD NOT MAKE ANY INQUIRY INTO THE ALLEGATION MADE BY THE RESPONDENT UNLESS THE RESPONDENT SATISFIED THE BOARD THAT IT COULD NOT HAVE MADE ITS ALLEGATION AT SOME EARLIER POINT IN TIME IN THE PROCEEDINGS. THE BOARD NOTED THAT IT HAD ALREADY ENTERTAINED THE REPRESENTATIONS OF THE REPRESENTATIVE OF THE APPLICANT ON THIS ISSUE AT THE INITIAL HEARING ON APRIL 10, 1972 AND HAD MADE ITS RULING WITH RESPECT TO THE TIMELINESS OF THE ALLEGATION. THE BOARD DREW TO THE ATTENTION OF COUNSEL FOR THE APPLICANT THE FACT THAT NO CROSS-EXAMINATION ON THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY AN APPLICANT TRADE UNION IN A CERTIFICATION APPLICATION IS PERMITTED SO AS TO PRESERVE THE SECRECY OF UNION MEMBERSHIP AND THAT ACCORDINGLY THE BOARD WAS TOTALLY DEPENDENT UPON THE ACCURACY OF THE INFORMATION CONTAINED IN THAT DOCUMENTARY EVIDENCE. THE BOARD FURTHER STATED THAT IT WAS FOR THIS REASON THAT THE BOARD WAS PREPARED TO INQUIRE INTO ALLEGATIONS OF IMPROPRIETY WITH RESPECT TO THE EVIDENCE OF MEMBERSHIP SUBMITTED BY AN APPLICANT TRADE UNION PROVIDED THERE WAS NO UNDUE DELAY IN MAKING THE ALLEGATION. THE BOARD FURTHER POINTED OUT THAT IT HAD TO BE SATISFIED THAT THE EVIDENCE OF MEMBERSHIP MET THE BOARD'S REQUIREMENTS AND FOR THAT REASON THE BOARD WAS UNDER A DUTY TO INQUIRE INTO ANY ALLEGATION OF IMPROPRIETY.

8. THE BOARD THEREUPON CALLED NICK NOZUYE AND WILLIAM SPIRA, THE PERSON SHOWN ON NOZUYE'S APPLICATION FOR MEMBERSHIP AS COLLECTOR OF THE ONE DOLLAR INITIATION FEE, BOTH OF WHOM THE BOARD HAD SUB-

POENAED AS WITNESSES, TO TESTIFY WITH REGARD TO THE MATTERS SET OUT IN THE REGISTRAR'S LETTER OF APRIL 21, 1972. SUBSEQUENT TO THE BOARD'S OWN EXAMINATION OF THE TWO WITNESSES, COUNSEL FOR THE RESPONDENT AND COUNSEL FOR THE APPLICANT IN THAT ORDER WERE PERMITTED TO CROSS-EXAMINE THEM. AT THE CONCLUSION OF THE TESTIMONY OF MR. NOZUYE AND MR. SPIRA, THE BOARD ADVISED THE PARTIES THAT IT DID NOT PROPOSE TO CALL ANY OTHER PERSONS AS ITS OWN WITNESSES TO TESTIFY RELATING TO THE ALLEGATION MADE BY THE RESPONDENT. UPON THE INQUIRY OF THE BOARD, COUNSEL FOR THE APPLICANT ADVISED THE BOARD THAT HE WISHED TO FILE IN EVIDENCE CERTAIN DOCUMENTS. COUNSEL FOR THE RESPONDENT OBJECTED TO THE ADMISSION OF THE SAID DOCUMENTS WITHOUT THEIR BEING IDENTIFIED BY A WITNESS. THE BOARD UPHELD THE OBJECTION MADE BY COUNSEL FOR THE RESPONDENT. COUNSEL FOR THE APPLICANT THEREUPON ADVISED THE BOARD THAT HE WISHED TO CALL A WITNESS FOR THIS PURPOSE. ANY WITNESS CALLED BY COUNSEL FOR THE APPLICANT OF COURSE WOULD HAVE BEEN SUBJECT TO CROSS-EXAMINATION BY COUNSEL FOR THE RESPONDENT. HAVING REGARD TO THE FACT THAT IT WAS LATE IN THE AFTERNOON WHEN COUNSEL FOR THE APPLICANT ADVISED THE BOARD THAT HE WISHED TO CALL EVIDENCE AND THE ASSESSMENT BY THE BOARD THAT THE HEARING ON THE ALLEGATION COULD NOT BE COMPLETED ON THAT DAY, THE BOARD ADJOURNED THE HEARING TO A DATE TO BE SET BY THE REGISTRAR.

9. THE APPLICATION WAS LISTED FOR CONTINUATION OF HEARING ON JUNE 12, 1972, WHICH WAS THE EARLIEST DATE ON WHICH ALL THREE MEMBERS OF THE DIVISION OF THE BOARD SEIZED OF THE APPLICATION WERE AVAILABLE FOR A HEARING. IN REPLY TO A LETTER FROM COUNSEL FOR THE APPLICANT DATED MAY 3, 1972, THE REGISTRAR ADVISED COUNSEL OF THIS FACT.

10. BY LETTER TO THE BOARD DATED MAY 19, 1972, COUNSEL FOR THE RESPONDENT ENCLOSED A COPY OF A LEAFLET HE ALLEGED WAS DISTRIBUTED BY THE APPLICANT OUTSIDE THE RESPONDENT'S PLANT SUBSEQUENT TO THE BOARD HEARING OF APRIL 28, 1972. A COPY OF THE LETTER OF COUNSEL FOR THE RESPONDENT AND THE ENCLOSED LEAFLET WERE FORWARDED TO COUNSEL FOR THE APPLICANT UNDER COVERING LETTER FROM THE REGISTRAR DATED MAY 23, 1972. THE CONTENTS OF THE SAID LEAFLET READ:

THE FIGHT GOES ON

ON APRIL 28TH ANOTHER LABOUR BOARD HEARING TOOK PLACE.

IT WAS A DISGRACE! WHY?

BECAUSE IT DEMONSTRATED CLEARLY THAT THE PURETEX KNITTING AND THE LABOUR BOARD WERE COMBINED TOGETHER TO TRY TO DENY THE WORKERS THEIR RIGHT TO UNION RECOGNITION.

AT THE HEARING ON APRIL 10TH IT WAS ESTABLISHED VERY CLEARLY THAT THE CANADIAN TEXTILE AND CHEMICAL UNION REPRESENTS THE GREAT MAJORITY OF THE EMPLOYEES OF PURETEX KNITTING. WE ONLY NEEDED 65% TO GET OUTRIGHT CERTIFICATION. WE HAD ACTUALLY 74%.

AT THE VERY LAST MINUTE, WHEN THE COMPANY SAW THAT WE HAD WON, THEY HANDED THE CHAIRMAN A PAPER SAYING THAT THEY HAD INFORMATION THAT AN EMPLOYEE HAD NOT PAID HIS CARD PROPERLY. THE UNION PROTESTED THIS UNFAIR ACCUSATION. BUT THE BOARD DECIDED TO INVESTIGATE.

WHAT DID THEY FIND? NOTHING. BUT THEY ORDERED A NEW HEARING JUST THE SAME. MORE DELAY.

ON APRIL 28TH, NICK NOZUYE WENT ON THE WITNESS STAND UNDER OATH. HE TESTIFIED CLEARLY THAT HE HAD SIGNED HIS CARD AND HAD PAID HIS DOLLAR TO THE UNION. WHAT MORE DO THEY WANT? BUT THE COMPANY LAWYER AND THE BOARD WENT AFTER HIM AS THOUGH HE WAS A CRIMINAL. WHY? BECAUSE HE DID NOT GIVE THE DOLLAR DIRECTLY TO WM. SPIRA. HE ASKED SOMEONE ELSE TO GIVE IT TO HIM.

FOR AN HOUR, THE COMPANY LAWYER WENT AFTER BILL SPIRA AS THOUGH HE HAD COMMITTED MURDER, TRYING TO TWIST HIS WORDS. THEY DID NOT SUCCEED. THE WHOLE SITUATION IS CLEAR. DESPITE ALL THIS, THE BOARD PUT OFF ITS DECISION AGAIN TO ANOTHER DATE. MORE DELAY.

WHY IS THIS?

WHY DOES THE COMPANY FIGHT OUR UNION WITH ALL THE DIRTY TRICKS THEY CAN EMPLOY.

BECAUSE THE COMPANY DOES NOT WANT ANY UNION AT ALL.

BUT THEY KNOW THAT THE EMPLOYEES ARE ORGANIZED. SO SATOK WOULD LIKE TO HAVE A UNION THAT HE CAN CONTROL. HE WANTS A COMPANY UNION - SO THAT HE CAN CONTINUE TO PAY HIS ROTTEN WAGES.

BUT THE EMPLOYEES DON'T WANT A UNION THAT WILL SELL THEM OUT.

WE HAVE A REAL UNION NOW - AND WE ARE GOING TO KEEP IT.

CANADIAN TEXTILE & CHEMICAL UNION

11 GEORGE ST., BRANTFORD

400 HOPEWELL, TORONTO

11. AT THE OUTSET OF THE HEARING ON JUNE 12, 1972, AFTER REVIEWING THE PROCEEDINGS TO DATE, THE BOARD INQUIRED OF COUNSEL FOR THE APPLICANT AS TO WHETHER THE APPLICANT HAD BEEN RESPONSIBLE FOR THE PUBLICATION OF THE SAID LEAFLET QUOTED ABOVE. THE BOARD QUOTED THE FIRST THREE PARAGRAPHS OF THE LEAFLET AND STATED THAT THE SERIOUS ALLEGATION WITH RESPECT TO THE BOARD CONTAINED IN PARAGRAPH 3 WAS TOTALLY UNFOUNDED AND REQUESTED INTER ALIA THAT THE APPLICANT RETRACT THE SAID STATEMENT AS IT RELATED TO THE BOARD. COUNSEL FOR THE APPLICANT ADVISED THE BOARD THAT THE APPLICANT WAS NOT PREPARED TO AFFIRM OR DENY THAT IT WAS RESPONSIBLE FOR THE PUBLICATION OF THE SAID LEAFLET AND FURTHER ADVISED THE BOARD THAT IT WAS NOT PREPARED TO RETRACT THE STATEMENT CONTAINED IN PARAGRAPH 3. COUNSEL FOR THE APPLICANT ARGUED THAT THE LEAFLET AND ITS CONTENTS WERE NOT RELEVANT TO THE ISSUE BEFORE THE BOARD AND SUBMITTED THAT THE BOARD SHOULD CONTINUE WITH THE HEARING ON THE ISSUE BEFORE IT IN THE APPLICATION. THE BOARD RULED THAT IN VIEW OF THE POSITION TAKEN BY COUNSEL FOR THE APPLICANT WITH REGARD TO THE STATEMENT CONCERNING THE BOARD CONTAINED IN THE LEAFLET, THE BOARD WAS RESERVING ITS DECISION AS TO HOW IT WOULD PROCEED AND ADJOURNED THE HEARING.

12. THERE IS NO QUESTION THAT THE LEAFLET CONTAINS A GRAVE AND UNFOUNDED ALLEGATION CONCERNING THE BOARD AND CERTAIN ERRORS IN FACTS. ANY PERSON READING THE LEAFLET WOULD BE SERIOUSLY MISLED AS TO WHAT HAD TRANSPIRED IN THE PROCEEDINGS BEFORE THE BOARD RELATING TO THE INSTANT APPLICATION. THE BOARD IS OF THE OPINION, HOWEVER, NOTWITHSTANDING THE POSITION TAKEN BY COUNSEL FOR THE APPLICANT, THAT IT IS IN THE BEST INTERESTS OF THE PARTIES AND PARTICULARLY THE EMPLOYEES CONCERNED THAT THE BOARD PROCEED WITH THE HEARING ON THE MEMBERSHIP ISSUE BEFORE IT.

13. THE BOARD ACCORDINGLY DIRECTS THAT THE REGISTRAR LIST THIS MATTER FOR CONTINUATION OF HEARING.

944-71-R: H. M. ARNOTT, ET AL. (APPLICANT) V. LOCAL 1219, CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT #1) V. CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT #2) V. THE CORPORATION OF THE TOWN OF MARKHAM (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

DECISION OF THE BOARD:

JUNE 16, 1972.

1. THIS IS A CASE IN WHICH AN APPLICATION WAS BROUGHT UNDER SECTION 52 OF THE ACT. DECISIONS WERE ISSUED BY THE BOARD ON JANUARY 10, 1972 AND ON MARCH 1, 1972.

2. THE RESPONDENTS HAVE REQUESTED THE BOARD TO GIVE WRITTEN REASONS COVERING THE LATTER DECISION. IN COMPLYING WITH THE REQUEST, THE BOARD FINDS IT NECESSARY TO POINT OUT THAT THE REASONS GIVEN IN ITS DECISION OF JANUARY 10, 1972 ARE FUNDAMENTAL TO THE WHOLE MATTER AND THEY MUST BE READ AS BASICALLY RELEVANT TO AND AS FORMING PART OF WHAT FOLLOWS.

3. THE DECISION OF JANUARY 10, 1972, PROVIDED THAT THE PARTIES TO THE MEMORANDUM OF AGREEMENT TO WHICH REFERENCE HAD BEEN MADE THROUGHOUT THAT DECISION, MIGHT ADDUCE EVIDENCE AND MAKE REPRESENTATIONS WITH A VIEW TO DISCHARGING THE ONUS PLACED UPON THEM BY SECTION 52(3) OF THE LABOUR RELATIONS ACT. A FURTHER HEARING WAS HELD RESULTING IN THE DECISION OF MARCH 1, 1972 REFERRED TO ABOVE.

4. FUNDAMENTAL TO AN UNDERSTANDING OF THE PROBLEM FACED BY THE RESPONDENTS IS A GRASP OF THE WELL ESTABLISHED DISTINCTION MADE BY THE BOARD BETWEEN A PARENT UNION AND ONE OF ITS LOCALS. AS WAS SET OUT IN PARAGRAPH 24 OF THE BOARD'S DECISION DATED JANUARY 10, 1972, THE BOARD HAS CONSISTENTLY DEALT WITH A LOCAL UNION AND ITS PARENT ORGANIZATION AS TWO SEPARATE ENTITIES. IT IS ALSO TO BE UNDERSTOOD THAT IT IS WELL ESTABLISHED THAT THE BOARD CONSIDERS MEMBERSHIP IN A LOCAL TO INCLUDE MEMBERSHIP IN THE PARENT BUT DOES NOT CONSIDER MEMBERSHIP IN THE PARENT AS BEING MEMBERSHIP IN THE LOCAL. IT FOLLOWS THAT EACH MAY INDEPENDENTLY BE CERTIFIED AS A BARGAINING AGENT IN THEIR OWN RIGHT WITH ALL THAT THAT IMPLIES UNDER THE ACT.

5. WE FEEL IT NECESSARY TO RESTATE THESE BASIC PRINCIPLES BECAUSE COUNSEL FOR THE RESPONDENT FILED CERTAIN UNION MEMBERSHIP CARDS AS WHAT WAS TERMED "CONCLUSIVE EVIDENCE" OF LOCAL 1219'S ENTITLEMENT TO REPRESENT THE EMPLOYEES CONCERNED. THESE CARDS, HOWEVER, CONSTITUTE EVIDENCE OF MEMBERSHIP IN CANADIAN UNION OF PUBLIC EMPLOYEES AND DO NOT RELATE OF LOCAL 1219.

6. ONCE THE ABOVE BASIC MATTERS ARE GRASPED, IT SHOULD BECOME APPARENT THAT THERE IS, IN THE CIRCUMSTANCES OUTLINED IN THE PREVIOUS DECISION, A PRIMA FACIE CONFLICT OF INTEREST BETWEEN RESPONDENT #1 AND RESPONDENT #2 FOR THE BARGAINING RIGHTS WITH RESPECT TO THE EMPLOYEES WHOM THE MEMORANDUM OF AGREEMENT PURPORTS TO COVER. THE FACT THAT BOTH RESPONDENTS WERE REPRESENTED BY SAME COUNSEL DOES NOTHING, IN ITSELF, TO ELIMINATE OR MITIGATE THE INHERENT CONFLICT APPARENT FROM AN OBJECTIVE VIEW POINT, BETWEEN THE TWO UNIONS WITH RESPECT TO THE BARGAINING RIGHTS IN QUESTION.

7. TO UPHOLD THE POSITION ADOPTED BY THE LOCAL, IT WOULD BE NECESSARY TO DISPOSE OF THE BARGAINING RIGHTS ACCORDED TO CANADIAN UNION OF PUBLIC EMPLOYEES UNDER THE VARIOUS CERTIFICATES ISSUED TO IT BY THE BOARD. THE FACT IS THAT CANADIAN UNION OF PUBLIC EMPLOYEES

HAS NOT ABANDONED ITS BARGAINING RIGHTS NOR TRANSFERRED THEM UNDER SECTION 54 OF THE ACT AND THERE HAS BEEN NO TERMINATION OF THOSE RIGHTS BY THE LABOUR RELATIONS BOARD. BARGAINING RIGHTS ARE NOT TO BE DEALT WITH LIGHTLY. EVEN BETWEEN PARENT AND LOCAL, FORMALITIES MUST BE OBSERVED IN ALL MATTERS DEALING WITH ANY DISPOSITION OF BARGAINING RIGHTS.

8. THERE WAS EVIDENCE OF PARTICIPATION BY LOCAL 1219 IN MEETINGS, BARGAINING SESSIONS AND STRIKE VOTES HELD ON BEHALF OF THE EMPLOYEES CONCERNED IN THIS MATTER. THE EVIDENCE ALSO INDICATES THAT LOCAL 1219, TOGETHER WITH CANADIAN UNION OF PUBLIC EMPLOYEES, SIGNED COLLECTIVE AGREEMENTS AND TOOK PART IN CONCILIATION PROCEEDINGS RELATING TO EMPLOYEES IN THE BARGAINING UNIT REFERRED TO IN THE MEMORANDUM OF AGREEMENT. WITH THE FOREGOING IN MIND, THE RESPONDENT CITED THE GILBARCO CANADA LTD. CASE, 1971 O.L.R.B. MONTHLY REPORT, MARCH, P. 155. THE BOARD FINDS THE GILBARCO CASE (SUPRA) TO BE CLEARLY DISTINGUISHABLE ON ITS FACTS FROM THE PRESENT CASE IN WHICH, UNLIKE IN THE GILBARCO CASE (SUPRA), THE ONUS TO ESTABLISH A RIGHT TO REPRESENTATION INVOLVES THE ADDITIONAL TASK OF ELIMINATING THE BARGAINING RIGHTS OF A UNION THAT HAS BEEN CERTIFIED WITH RESPECT TO EMPLOYEES IN THE BARGAINING UNIT IN QUESTION.

9. THE ACTIVITIES OF LOCAL 1219 DESCRIBED IN THE FOREGOING PARAGRAPH ARE NOT, IN THE CIRCUMSTANCES OF THIS CASE, SUFFICIENT TO PERMIT IT TO USURP THE CERTIFIED BARGAINING RIGHTS OF CANADIAN UNION OF PUBLIC EMPLOYEES NOR TO ENTITLE IT TO REPRESENT EMPLOYEES IN A BARGAINING UNIT TO WHICH THE SUBSISTING BARGAINING UNITS OF CANADIAN UNION OF PUBLIC EMPLOYEES RELATE.

10. THE BOARD WISHES TO MAKE IT CLEAR THAT THE BARGAINING UNIT TO WHICH ITS CONSIDERATIONS AND ITS DECISIONS ARE RELATED TO THAT BARGAINING UNIT DESCRIBED IN THE MEMORANDUM OF AGREEMENT.

11. THE FOREGOING ARE THE REASONS UNDERLYING THE BOARD'S DECISION OF MARCH 1, 1972.

18024-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. COCHRANE NURSING HOME LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER O. HODGES:
JUNE 19, 1972.

1. PURSUANT TO THE DECISION OF THE BOARD IN THIS MATTER DATED JULY 17, 1970, THE APPLICANT WAS CERTIFIED TO REPRESENT ALL EMPLOYEES OF THE RESPONDENT AT ITS NURSING HOME IN COCHRANE SUBJECT TO CERTAIN EXCLUSIONS WHICH INCLUDED "SUPERVISORS."

2. DURING THE COURSE OF BARGAINING AN ISSUE HAS ARISEN BETWEEN THE PARTIES AS TO WHETHER AT THE RELEVANT TIMES MMES. MCGOLDRICK, ANDRUNYK, CHRETIEN AND HARPER, CLASSIFIED BY THE RESPONDENT AS "SUPERVISORY CHARGE NURSES" FALL WITHIN THE SAID SUPERVISORY EXCLUSION. PUT ANOTHER WAY, THE BOARD IS REQUESTED TO DETERMINE WHETHER THESE CHARGE NURSES EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

3. PURSUANT TO THE DECISION OF THE BOARD DATED MARCH 21, 1972, MEETING OF THE PARTIES WERE CONVENED IN THIS REGARD ON APRIL 8 AND 19, 1972, WHICH CULMINATED IN THE REPORT OF THE EXAMINER HEREIN DATED MAY 19, 1972.

4. THE SAID REPORT OF THE EXAMINER DISCLOSES THAT DURING THE COURSE OF THESE MEETINGS, EACH OF THE AFOREMENTIONED CHARGE NURSES IDENTIFIED A DOCUMENT (FILED AS EXHIBIT #5 IN THOSE PROCEEDINGS) WHEN PRESENTED TO THEM BY THE REPRESENTATIVE ACTING ON BEHALF OF THE RESPONDENT AS ACCURATELY DESCRIBING THEIR DUTIES AND FUNCTIONS WHILE IN THE EMPLOY OF THE RESPONDENT.

5. THIS DOCUMENT IS REPRODUCED HEREIN AS FOLLOWS:

"JOB DESCRIPTION:- R.N.A.

RESPONSIBLE TO THE SUPERINTENDANT AND HER ASSISTANT.

DUTIES:-

-TO ACT AS NURSE IN CHARGE OF NURSING CARE AND RELATED WORK ON THE SHIFT TO WHICH SHE IS ASSIGNED.

-TO BE RESPONSIBLE FOR THE QUALITY OF CARE AND RELATED WORK GIVEN BY THE STAFF MEMBERS UNDER HER SUPERVISION, AND IN THE CASE WHERE SUCH CARE AND WORK DOES NOT MEET A MINIMUM STANDARD OF QUALITY WILL BE RESPONSIBLE FOR CORRECTING, DISCIPLINING AND/OR REPRIMANDING SUCH OFFENDING MEMBER,

-TO EVALUATE WORKMANSHIP, ATTITUDE AND

GENERAL SUITABILITY OF STAFF MEMBERS ASSIGNED TO HER JURISDICTION.

- TO ATTEND POLICY MAKING MEETINGS.
- TO ASSIST FROM TIME TO TIME, WITH REVISION OF GENERAL ROUTINES ESTABLISHED.

SUPERVISORY FUNCTIONS;-

- ASSIGNING STAFF TO DAILY DUTIES.
- TRAINING A NEW STAFF MEMBER IN PATIENT CARE AND ROUTINE WORK.
- REQUISITION SUPPLIES, EQUIPMENT AND REPAIRS THROUGH MAIN OFFICE.
- SUPERVISION OF TREATMENTS AND TECHNIQUES.
- ARRANGING FOR REPLACEMENT OF STAFF IN EMERGENCY SITUATIONS, E.G. ILLNESS.
- GRANTING LIMITED TIME OFF. E.G. LEAVE OF ABSENCE FOR PART OF A SHIFT IN EMERGENCY SITUATIONS."

6. EVEN IF WE WERE TO INTERPRET THE FUNCTIONS AS DESCRIBED IN THIS DOCUMENT STANDING ALONE, AS MANAGERIAL, (AND WE MAKE NO SUCH FINDING IN THIS REGARD), WE ARE NEVERTHELESS CONVINCED THAT SUCH DOCUMENT MUST BE READ IN CONJUNCTION WITH AND IN THE LIGHT OF THE TOTALITY OF THE EVIDENCE AS GLEANED FROM THE SAID REPORT OF THE EXAMINER HEREIN. IN OUR OPINION, WE ARE FACED IN THESE CIRCUMSTANCES TO AN ANALOGOUS SITUATION CONFRONTING THE BOARD IN THE AJAX AND PICKERING GENERAL HOSPITAL CASE, OLRB M.R. FEBRUARY 1970, P. 1283, CONCERNING THE INTERPRETATION OF A STATEMENT TO THE EFFECT THAT THE WITNESS THEREIN "SUPERVISES" WARD AIDES. AT PAGE 1289 THE BOARD STATED:

"...THE WORD "SUPERVISE" ON THE FACE OF MANY EXAMINER'S REPORTS HAS BECOME AN EPITHET WHICH RELIEVES THE PARTIES OF A PENETRATING EXAMINATION OF ACTUAL DUTIES AND RESPONSIBILITIES. THE WORDS "SUPERVISE", "SUPERVISOR" AND VARIATIONS OF THESE WORDS DO NOT OF NECESSITY CHARACTERIZE THE PERSON EXAMINED AS PERFORMING MANAGERIAL FUNCTIONS."

7. IN THIS REGARD WE FIND IT NOTEWORTHY THAT THE NAMES OF MMES. MCGOLDRICK AND CHRETIEN APPEAR ON THE ORIGINAL LIST FILED BY THE RESPONDENT UNDER THE CLASSIFICATION OF "NURSING" (EXHIBIT #2A) PURSUANT TO THE APPLICATION FOR CERTIFICATION BEFORE THIS BOARD DATED JUNE 25, 1970. THERE WAS NO OBJECTION RAISED BY THE RESPONDENT AT THE HEARING OF THIS MATTER ON JULY 16, 1970 TO THE INCLUSION OF THESE INDIVIDUALS IN THE BARGAINING UNIT. WE ALSO NOTE THAT ALTHOUGH THE DOCUMENT REFERRED TO IN PARAGRAPH NO. 5 HEREIN, (EXHIBIT #5), IS ENTITLED "JOB DESCRIPTION:- R.N.A.," IT WOULD NEVERTHELESS APPEAR THAT MMES. ANDRUNYK AND CHRETIEN DO NOT POSSESS THE QUALIFICATIONS OF A REGISTERED NURSING ASSISTANT. FINALLY, IT BECOMES CLEAR FROM THE EVIDENCE OF MRS. LOUCKS, THE ADMINISTRATOR THAT THIS DOCUMENT WHICH WAS PREPARED BY HER WAS IN FACT DISTRIBUTED TO THE CHARGE NURSES SOMETIME IN NOVEMBER OF 1970, OR IN OTHER WORDS SOME FIVE MONTHS SUBSEQUENT TO THE TIME OF THE FILING OF THE APPLICATION FOR CERTIFICATION.

8. TURNING NOW TO THE SPECIFIC EVIDENCE AS ELICITED FROM THE CHARGE NURSES THEMSELVES AS APPEARING IN THE REPORT OF THE EXAMINER HEREIN, WE FIND THAT THE FOLLOWING FACTORS IN PARTICULAR, MILITATE AGAINST OUR FINDING THAT THEIR ACTIVITIES, IN TOTO, ARE MANAGERIAL: THE WORK SCHEDULE OR ROSTER FOR THE STAFF IS NOT MADE UP BY THESE INDIVIDUALS BUT RATHER BY MRS. LOUCKS; THE GREAT MAJORITY OF THEIR TIME IS SPENT IN DIRECT PATIENT CARE; THEY CALL UP REPLACEMENTS FOR PERSONS OFF SICK ONLY IN THE SITUATION WHERE THE ADMINISTRATOR OR REGISTERED NURSE ARE NOT PRESENT AT WORK; THEIR SUBSTANTIAL LACK OF PARTICIPATION IN THE HIRING, FIRING OR DISCIPLINING OF EMPLOYEES; THEIR UNFAMILIARITY WITH THE PAY RECEIVED BY THE NURSES AIDES AND FAILURE TO MAKE RECOMMENDATIONS FOR PAY INCREASES IN THIS REGARD.

9. AS REGARDS, THEIR PARTICIPATION IN FILLING OUT EVALUATION FORMS (EXHIBIT #4), WE FIND THAT THESE FORMS ARE TURNED OVER TO MRS. LOUCKS FOR HER OWN PERSONAL ATTENTION AND SCRUTINY. IN THIS REGARD, WE FIND THE SITUATION NOT ENTIRELY DISSIMILAR TO THAT DESCRIBED IN THE AJAX AND PICKERING GENERAL HOSPITAL CASE (SUPRA), WHERE AT PAGE 1288, THE BOARD IN ASSESSING THE MANAGERIAL CAPACITY OF A HEAD NURSE, STATED:

"IN DISCUSSING EVALUATION SLIPS FOR NURSES SHE TESTIFIED THAT SHE DOES THESE ONLY WHEN FORMS ARE SENT TO HER BY THE OFFICE - SHE DOES NOT INITIATE THESE FORMS. THE FORMS DO NOT AFFECT SALARIES, AND ARE "WITH REGARD TO APPEARANCE, DEPENDABILITY, ATTITUDE, TEACHABILITY AND INITIATIVE." CF THE CORPORATION OF THE COUNTY OF HALTON 1969 MARCH OLRB M.R. 1271.

WE CONCLUDE THAT HER FUNCTIONS CONCERNING THESE FORMS IS OF A MECHANICAL NATURE AND SHE MAKES NO FINAL DECISION WITH RESPECT TO THESE REPORTS."

WE ACCORDINGLY ADOPT THE SAME CONCLUSION IN RELATION TO THE CHARGE NURSES HAVING REGARD TO ALL OF THE CIRCUMSTANCES AND WHICH WE FIND AKIN TO THOSE DESCRIBED IN THE CORPORATION OF THE COUNTY OF HALTON CASE (SUPRA) IN RELATION TO THE SENIOR PUBLIC HEALTH INSPECTORS, WHERE THE BOARD CONCLUDED, AT PAGE 1272, THAT THEIR "FUNCTIONS PERFORMED IN THIS REGARD WOULD PARALLEL A LEAD HAND OR SENIOR EMPLOYEE ADVISING THE SUPERVISORY STAFF AS TO THE NATURE OF THE WORK PERFORMED BY THE MEN WITH WHOM THEY ARE WORKING."

10. THE POLICY OF THE BOARD IN DETERMINING WHETHER A PERSON IS EMPLOYED IN A MANAGERIAL CAPACITY IS CLEARLY SET FORTH IN THE LAKEHEAD BOARD OF EDUCATION CASE OLRB M.R. FEBRUARY, 1970, P. 1331 WHERE AT PAGE 1332, IT IS STATED:

"THE BOARD IN A NUMBER OF RECENT DECISIONS HAS RECOGNIZED THE GROWING COMPLEXITY OF MANAGEMENT STRUCTURES, THE DIFFUSION OF THE LINES OF AUTHORITY AND THE DIVERGENT ELEMENTS THAT GO INTO THE DECISION MAKING PROCESS. THE BOARD, ACCORDINGLY, IN MAKING SUCH DETERMINATION ENDEAVOURS TO DISTINGUISH BETWEEN PERSONS WHO TRULY EXERCISE INDEPENDENT DISCRETION OR ASSERT REAL AUTHORITY, AS OPPOSED TO THOSE WHO MERELY IMPLEMENT DECISIONS WITHIN A FRAMEWORK DECIDED BY OTHERS OR WHOSE INDEPENDENT DISCRETION IS LIMITED TO PRE-DETERMINED CIRCUMSCRIBED AREA. THE BOARD IS COGNIZANT OF THE FACT ALSO THAT MANAGEMENT TODAY GENERALLY NEEDS THE ASSISTANCE AND ADVICE OF RESPONSIBLE AND HIGHLY QUALIFIED INDIVIDUALS IN THE FIELDS OF THEIR PARTICULAR KNOWLEDGE. THE FACT THAT SUCH ASSISTANCE OR ADVICE IS SOUGHT AND IS ACCEPTED OR TAKEN INTO ACCOUNT BY MANAGEMENT DOES NOT MEAN THAT SUCH PERSONS EXERCISE MANAGERIAL FUNCTIONS IN THEIR OWN RIGHT. IN ALL CASES, THE BOARD MUST EVALUATE THE TOTALITY OF EACH PERSON'S JOB FUNCTIONS IN DECIDING WHETHER THE PERSON CONCERNED, IN AN INTRINSIC SENSE, EXERCISES MANAGERIAL AUTHORITY (SEE THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE, 1969 AUG. OLRB M.R. P. 669, AND AJAX AND PICKERING GENERAL HOSPITAL CASE, (SUPRA).")

11. IN THIS REGARD, WE NOTE ONE FURTHER PASSAGE FROM THE AJAX AND PICKERING GENERAL HOSPITAL CASE (SUPRA) WHEREIN AT PAGE 1286, IT IS STATED:

...THE LABOUR RELATIONS ACT MUST BE INTERPRETED AS AN ACT IN THE PUBLIC INTEREST WHICH IS TO PROVIDE COLLECTIVE BARGAINING FOR EMPLOYEES, AND IT IS THEREFORE INCUMBENT ON PERSONS WHO SEEK TO EXCLUDE EMPLOYEES FROM THE SCHEME OF THE ACT TO PROVE THAT SUCH PERSONS EXERCISE MANAGERIAL FUNCTIONS. SEE BAKERY & CONFECTIONERY WORKERS I.U.A. v. SALMI 56 D.L.R. (2d) 193.

12. IN LIGHT OF THESE PRINCIPLES AND UPON CAREFULLY REVIEWING THE TOTALITY OF THE EVIDENCE AS APPEARING IN THE SAID REPORT OF THE EXAMINER AND TAKING INTO ACCOUNT THE REPRESENTATIONS THERE-TO, WE ARE NOT SATISFIED THAT THE CHARGE NURSES EXERCISE THAT QUALITY OF SUPERVISION, CONTROL AND INDEPENDENT DISCRETION, NECESSARY FOR FINDING THAT THEY EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE ACT.

13. ACCORDINGLY, WE FIND THAT THE FOUR CHARGE NURSES ARE INCLUDED IN THE BARGAINING UNIT AS DEFINED IN THE ORIGINAL DECISION OF THE BOARD IN THIS MATTER DATED JULY 17, 1970.

DECISION OF BOARD MEMBER H. F. IRWIN: JUNE 19, 1972.

1. THIS IS A REFERRAL TO THE BOARD UNDER SECTION 95(2) OF THE LABOUR RELATIONS ACT WHICH READS AS FOLLOWS:

"(2) IF, IN THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT, A QUESTION ARISES AS TO WHETHER A PERSON IS AN EMPLOYEE OR AS TO WHETHER A PERSON IS A GUARD, THE QUESTION MAY BE REFERRED TO THE BOARD AND THE DECISION OF THE BOARD THEREON IS FINAL AND CONCLUSIVE FOR ALL PURPOSES."

THE EMPLOYER SUBMITS THAT MESDAMES SUSAN ANDRUNYK, ANNETTE CHRETIEN, GRACE HARPER AND JUDITH MCGOLDRICK, WHO ARE CLASSIFIED AS "SUPERVISORY CHARGE NURSES" EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(b) OF THE LABOUR RELATIONS ACT AND, THEREFORE, ARE NOT EMPLOYEES FOR THE PURPOSES OF THE ACT.

2. FOLLOWING RECEIPT OF THE REFERRAL, THE BOARD IN ITS DECISION DATED MARCH 21, 1972 APPOINTED AN EXAMINER TO INQUIRE INTO THE

DUTIES AND RESPONSIBILITIES OF THESE PERSONS AND REPORT HIS FINDINGS TO THE BOARD. THE EXAMINER MET WITH THE PARTIES IN COCHRANE ON APRIL 8TH AND 19TH, 1972 AND ON MAY 19TH ISSUED HIS VERY COMPLETE AND COMPREHENSIVE REPORT TOGETHER WITH EXHIBITS FILED BY THE EMPLOYER.

3. I HAVE CAREFULLY REVIEWED THE EXAMINER'S REPORT AND THE EXHIBITS. I CAN FIND NO EVIDENCE THAT A CHANGE HAS BEEN MADE IN THE DUTIES AND RESPONSIBILITIES OF THE PERSONS NOW CLASSIFIED AS "SUPERVISORY CHARGE NURSES" SINCE THE APPLICATION FOR CERTIFICATION WAS FILED WITH THE BOARD ON JUNE 25TH, 1970. THE LIST OF EMPLOYEES IN THE BARGAINING UNIT FILED WITH THE BOARD BY THE EMPLOYER AT THAT TIME INCLUDED MRS. CHRETIEN AND MRS. MCGOLDRICK ON SCHEDULE A. THE OCCUPATIONAL CLASSIFICATION OF BOTH THESE PERSONS IS GIVEN ON THE EMPLOYER'S LIST AS "NURSING". FURTHERMORE, NO REPRESENTATIONS WERE MADE AT THE BOARD HEARING HELD IN TORONTO ON JULY 16, 1970 THAT THESE PERSONS WERE CONSIDERED TO EXERCISE MANAGERIAL OR SUPERVISORY FUNCTIONS AND SHOULD BE EXCLUDED FROM THE BARGAINING UNIT. CONSEQUENTLY, THEIR NAMES WERE INCLUDED ON THE LIST OF EMPLOYEES IN THE BARGAINING UNIT FOR THE PURPOSE OF THE COUNT ON AGREEMENT OF THE PARTIES.

4. THE LONG STANDING BOARD POLICY IN SUCH CASES IS THAT THE PARTY MAKING THE REFERRAL UNDER SECTION 95(2) OF THE ACT MUST SHOW CONCLUSIVELY THAT SUBSTANTIAL AND MATERIAL CHANGES IN THE DUTIES AND RESPONSIBILITIES OF THE CHALLENGED PERSONS HAVE TAKEN PLACE SUBSEQUENT TO THE DATE OF THE APPLICATION FOR CERTIFICATION AND THAT SUCH CHANGES HAVE CAUSED THEIR DUTIES AND RESPONSIBILITIES TO BECOME MANAGERIAL WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT. THE EMPLOYER IN THE INSTANT CASE HAS NOT DISCHARGED THIS ONUS. CONSEQUENTLY, I CONCUR IN THE MAJORITY DECISION THAT THE APPLICATION MUST BE DISMISSED. [SEE: THE BORDEN COMPANY LTD. CASE, OLRB M.R., NOVEMBER 1969 AT P. 1012, PARA. 5; OSHAWA PUBLIC LIBRARY BOARD CASE, OLRB M.R., NOVEMBER, 1967, P. 793 AT P. 795, PARA. 10.]

1984-72-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) V. TILLOTSON PLASTICS INDUSTRIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: L. C. ARNOLD, M. CAPRI AND EDWARD C. WITT-HAMES FOR THE APPLICANT; GORDON ATLIN, Q.C., AND M. MARGOLIS FOR THE RESPONDENT; KEITH LAPLANT FOR THE OBJECTORS.

DECISION OF THE BOARD:

JUNE 20, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE APPLICANT AND THE RESPONDENT HAVE EACH WITHDRAWN THE ALLEGATION OF UNFAIR CONDUCT MADE BY THEM IN THIS MATTER.

4. ALTHOUGH CERTAIN SUSPICIONS WERE AROUSED AS A RESULT OF THE FACT THAT MR. LAPLANT WHO REPRESENTED THE OBJECTORS IN THIS MATTER SPENT A CONSIDERABLE AMOUNT OF TIME IN THE PLANT OUTSIDE OF HIS NORMAL SHIFT HOURS FOR THE PURPOSE OF COLLECTING SIGNATURES, THERE IS NO EVIDENCE BEFORE US WHICH WOULD INDICATE THAT THERE WAS ANY ARRANGEMENT BETWEEN MR. LAPLANT AND THE COMPANY OFFICIALS FOR THIS PURPOSE. IN ADDITION, THERE IS NO EVIDENCE THAT THE EMPLOYEES ON ANY ONE SHIFT WERE AWARE THAT MR. LAPLANT HAD BEEN IN THE PLANT ON THE EARLIER SHIFTS. EVEN THOUGH IT MAY BE ASSUMED THAT MEMBERS OF MANAGEMENT MIGHT HAVE SUSPECTED THE PURPOSE FOR MR. LAPLANT BEING IN THE PLANT DURING OFF-SHIFT HOURS, THE FACT THAT IT WAS NOT UNCOMMON FOR MR. LAPLANT TO VISIT THE PLANT IN OFF-SHIFT HOURS TOGETHER WITH THE FACT THAT HE OBTAINED SIGNATURES FROM THE OBJECTORS IN A SECRETIVE MANNER PREVENTS US FROM DRAWING THE INFERENCE WHICH THE APPLICANT HAS REQUESTED THE BOARD TO DRAW IN THIS MATTER. IN THE ABSENCE OF ANY CLEAR EVIDENCE THAT MEMBERS OF MANAGEMENT HAD A DIRECT HAND IN THE CIRCULATION OF THE PETITION IN THIS MATTER AND IN THE ABSENCE OF EVIDENCE WHICH WOULD CAUSE US TO FIND THAT MR. LAPLANT INTERFERED WITH PRODUCTION, WHICH WOULD NORMALLY BE OBJECTED TO BY THE FOREMAN, WE MUST GIVE EFFECT TO THE PETITION WHICH HAS BEEN FILED IN THIS MATTER.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 23, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TER-

MINUTE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

7. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

8. THE MATTER IS REFERRED TO THE REGISTRAR.

1697-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) V. CANADIAN UNION OF COMMUNICATION WORKERS (INTERVENER #1) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER #2).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H. ADE AND O. HODGES.

APPEARANCES AT THE HEARING: L. A. MACLEAN, J. R. PAWSON AND CARL ANDERSON FOR THE APPLICANT; CLAUDE HARARI AND GEORGE MEANEY FOR THE RESPONDENT; NO ONE FOR INTERVENER #1; ROSS RUSSELL AND WALTER LUCAS FOR INTERVENER #2.

DECISION OF THE BOARD: JUNE 20, 1972.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHICH WAS MADE ON MARCH 7, 1972 AND IN WHICH THE BOARD DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. SINCE THE RESPONDENT'S EMPLOYEES WERE NOT REPRESENTED BY ANY TRADE UNION AT THE TIME THE APPLICATION WAS MADE, THE BOARD, FOR REASONS GIVEN IN ITS DECISION OF MARCH 24, 1972, DIRECTED THAT THE EMPLOYEES IN THE VOTING CONSTITUENCY BE OFFERED A CHOICE BETWEEN EACH OF THE THREE TRADE UNIONS WHICH APPLIED TO BE CERTIFIED AND ALSO THE CHOICE OF "NO TRADE UNION".

2. ON THE TAKING OF THE VOTE ON APRIL 6, 1972, OF THE 122 EMPLOYEES WHO CAST BALLOTS, 48 VOTED IN FAVOUR OF THE APPLICANT, 30 VOTED IN FAVOUR OF INTERVENER #2, 27 VOTED IN FAVOUR OF NO TRADE UNION AND 17 VOTED IN FAVOUR OF INTERVENER #1.

3. FOLLOWING THE TAKING OF THE VOTE THE RESPONDENT, ON APRIL 14TH, WROTE TO THE BOARD AS FOLLOWS:

WE ARE IN RECEIPT OF THE NOTICE OF REPORT OF RETURNING OFFICER WHERE PRE-HEARING REPRESENTATION VOTE HAS BEEN HELD DATED APRIL 7, 1972 AND SIGNED BY J. DUNBAR, RETURNING OFFICER.

THE RESPONDENT HEREIN WISHES TO MAKE THE FOLLOWING REPRESENTATIONS IN REGARD TO THE CONCLUSIONS THE BOARD SHOULD REACH IN VIEW OF THE ABOVE-NOTED REPORT.

OUT OF A TOTAL NUMBER OF 122 EMPLOYEES CASTING BALLOTS IN THE SAID PRE-HEARING REPRESENTATION VOTE, THE BALLOT DISTRIBUTION WAS AS FOLLOWS:-

- A) 48 BALLOTS IN FAVOUR OF THE APPLICANT.
- B) 17 BALLOTS IN FAVOUR OF INTERVENER #1.
- C) 30 BALLOTS IN FAVOUR OF INTERVENER #2.
- D) 27 BALLOTS IN FAVOUR OF "NO TRADE UNION".

IT BECOMES APPARENT THAT NEITHER THE APPLICANT, NOR THE FIRST INTERVENER, NOR THE SECOND INTERVENER HAVE RECEIVED MORE THAN 50% OF THE BALLOTS CAST IN THE SAID PRE-HEARING REPRESENTATION VOTE. ACCORDINGLY, THE RESPONDENT HEREIN SUBMITS THAT THE BOARD SHOULD DISMISS THE APPLICATION FOR CERTIFICATION BY THE APPLICANT, INTERVENER #1 AND INTERVENER #2 AND, SHOULD IN THE USUAL MANNER, NOT ENTERTAIN ANY APPLICATION FOR CERTIFICATION BY THE APPLICANT, INTERVENER #1 OR INTERVENER #2 WITH RESPECT TO ANY OF THE EMPLOYEES OF THE RESPONDENT WITHIN A PERIOD OF 10 MONTHS FROM THE DATE OF THE BOARD'S DECISION IN REGARD TO THIS MATTER, PURSUANT TO SECTION 92 (1) (1).

FURTHERMORE, THERE IS NO EVIDENCE BEFORE THE BOARD THAT THE TRUE WISHES OF THE EMPLOYEES HAVE NOT BEEN DETERMINED BY THE REPRESENTATION VOTE IN THIS MATTER WHICH WAS HELD ON 6 APRIL, 1972. ACCORDINGLY, THE RESPONDENT HEREIN SUBMITS THAT THERE IS NO REASON FOR THE BOARD TO EXERCISE ITS DISCRETION UNDER SECTION 92 (5) OF THE ACT IN ORDER TO HOLD AN ADDITIONAL REPRESENTATION VOTE OR VOTES.

IF THE BOARD DOES NOT ACCEPT THE RESPONDENT'S REPRESENTATIONS IN REGARD TO THE CONCLUSIONS IT SHOULD REACH AS SET OUT IN THIS LETTER, THEN THE RESPONDENT HEREIN REQUESTS A HEARING BEFORE THE

BOARD AT WHICH TIME SUBMISSIONS WILL BE MADE IN REGARD TO ALL OUTSTANDING MATTERS.

4. THE BOARD, FOR REASONS GIVEN IN ITS DECISION OF APRIL 18, 1972, WITHOUT PREJUDICE TO THE RIGHTS OF THE RESPONDENT, DIRECTED THAT AN ADDITIONAL REPRESENTATION VOTE BE TAKEN PURSUANT TO THE PROVISIONS OF SECTION 92(5) OF THE ACT AND DIRECTED THAT REFERENCE TO INTERVENER #1 BE DELETED FROM THE BALLOT, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 92(6). THE EMPLOYEES WERE ACCORDINGLY OFFERED A CHOICE BETWEEN THE APPLICANT, INTERVENER #2 AND "NO TRADE UNION" AND THE BOARD FURTHER DIRECTED THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS BE SEALED. THE ADDITIONAL VOTE IN THIS MATTER WAS HELD ON MAY 8, 1972.

5. SECTIONS 92(5) AND 92(6) OF THE ACT READ AS FOLLOWS:

92(5) WHERE THE BOARD DETERMINES THAT A REPRESENTATION VOTE IS TO BE TAKEN AMONGST THE EMPLOYEES IN A BARGAINING UNIT OR VOTING CONSTITUENCY, THE BOARD MAY HOLD SUCH ADDITIONAL REPRESENTATION VOTES AS IT CONSIDERS NECESSARY TO DETERMINE THE TRUE WISHES OF THE EMPLOYEES.

92(6) WHERE, IN THE TAKING OF A REPRESENTATION VOTE, THE BOARD DETERMINES THAT THE EMPLOYEES ARE TO BE GIVEN A CHOICE BETWEEN TWO OR MORE TRADE UNIONS,

(A) THE BOARD MAY INCLUDE ON A BALLOT A CHOICE INDICATING THAT AN EMPLOYEE DOES NOT WISH TO BE REPRESENTED BY A TRADE UNION; AND

(B) THE BOARD, WHEN IT DECIDES TO HOLD SUCH ADDITIONAL REPRESENTATION VOTES AS MAY BE NECESSARY, MAY ELIMINATE FROM THE CHOICE ON THE BALLOT THE CHOICE FROM THE PREVIOUS BALLOT THAT HAS OBTAINED THE LOWEST NUMBER OF VOTES CAST.

6. A HEARING WAS HELD ON JUNE 14, 1972 TO INQUIRE INTO THE ISSUES RAISED BY THE RESPONDENT IN ITS LETTER OF APRIL 14, 1972.

7. HAVING CONSIDERED THE REPRESENTATIONS OF THE RESPONDENT, WE FIND THAT IT WAS NECESSARY TO HOLD THE ADDITIONAL REPRESENTATION VOTE WHICH WAS HELD ON MAY 8, 1972 IN ORDER TO DETERMINE THE TRUE

WISHES OF THE EMPLOYEES IN THIS MATTER. IN ARRIVING AT OUR DECISION, WE RECOGNIZE THAT BOTH SECTIONS 7(2) AND 8(2) OF THE ACT CONTEMPLATE THAT "A REPRESENTATION VOTE BE TAKEN". IF THOSE SECTIONS WERE CONSIDERED IN ISOLATION, THE BOARD WOULD HAVE NO JURISDICTION TO DIRECT ADDITIONAL REPRESENTATION VOTES. HOWEVER, SECTION 92(5) SPECIFICALLY GIVES THE BOARD AUTHORITY TO CONDUCT ADDITIONAL REPRESENTATION VOTES IN THE CIRCUMSTANCES THEREIN REFERRED TO.

8. AGAIN, SECTION 7(3) OF THE ACT GIVES THE BOARD JURISDICTION TO CERTIFY THE UNION AFTER A VOTE ONLY IN CASES WHERE "MORE THAN 50 PER CENT OF THE BALLOTS CAST ARE CAST IN FAVOUR OF THE TRADE UNION". THE BOARD HAS NO JURISDICTION TO CERTIFY ANY OF THE TRADE UNIONS IN THIS MATTER ON THE BASIS OF THE RESULTS OF THE FIRST VOTE SINCE NO TRADE UNION OBTAINED MORE THAN FIFTY PER CENT OF THE BALLOTS CAST. HOWEVER, BY DIRECTING THE ADDITIONAL VOTE, THE BOARD HAS NOT CERTIFIED ANY OF THE TRADE UNIONS, IT HAS SIMPLY ATTEMPTED TO SEEK ADDITIONAL EVIDENCE WHICH WOULD ASSIST THE BOARD IN DETERMINING THE EXACT NATURE OF THE TRUE WISHES OF THE EMPLOYEES.

9. PRIOR TO THE AMENDMENTS TO THE ACT WHICH APPEAR IN SECTIONS 92(5) AND 92(6), IT WAS NOT THE BOARD'S REGULAR PRACTICE TO INCLUDE THE CHOICE OF "NO TRADE UNION" ON THE BALLOT IN CASES SUCH AS THIS. AT THAT TIME ANY APPLICANT TRADE UNION THAT FAILED TO OBTAIN MORE THAN FIFTY PER CENT SUPPORT OF ALL THE EMPLOYEES ON THE VOTERS' LIST WOULD HAVE ITS APPLICATION DISMISSED. HOWEVER, SINCE THE AMENDMENTS TO THE ACT, WHERE THE CHOICE OF "NO TRADE UNION" IS OFFERED TO THE EMPLOYEES IN A REPRESENTATION VOTE, EACH CHOICE IS AFFORDED EQUAL WEIGHT. IF THE BOARD WERE TO ADOPT THE EARLIER PRACTICE IN THIS CASE, THE BOARD WOULD BE REQUIRED TO ATTACH ADDITIONAL WEIGHT TO THE CHOICE OF "NO TRADE UNION" IF THE BOARD WERE TO DISMISS EACH OF THE APPLICANTS BASED ON THE RESULTS OF THE FIRST VOTE. THIS PROCEDURE WOULD NOT ONLY BE CONTRARY TO REASON BUT IN ADDITION WOULD BE CONTRARY TO THE PURPOSE AND INTENT OF SECTIONS 92(5) AND 92(6) OF THE ACT.

10. ALTHOUGH THE TRUE WISHES OF THE EMPLOYEES AS EXPRESSED IN THE FIRST REPRESENTATION VOTE REQUIRE CLARIFICATION, WHAT IS PERFECTLY CLEAR FROM THE EVIDENCE OBTAINED IN THE VOTE IS THAT 95 PERSONS WHO CAST THEIR BALLOT HAVE INDICATED A DESIRE TO BE REPRESENTED BY A TRADE UNION AND ONLY 27 HAVE INDICATED THEY DO NOT WISH SUCH REPRESENTATION.

11. ALL THREE APPLICANT UNIONS WERE REQUIRED BY SECTION 8(2) OF THE ACT TO HAVE AT LEAST THIRTY-FIVE PER CENT OF THE EMPLOYEES IN THE VOTING CONSTITUENCY AS MEMBERS IN ORDER TO BE ENTITLED TO BE ON THE BALLOT. A SIMPLE MATHEMATICAL CALCULATION REVEALS THAT SOME OF THE EMPLOYEES SUPPORTED MORE THAN ONE TRADE UNION. IF THE EM-

PLOYEES WERE PERMITTED TO INDICATE MORE THAN ONE CHOICE ON THEIR BALLOT, ONE OF THE TRADE UNIONS MIGHT HAVE OBTAINED A MAJORITY. HOWEVER, EMPLOYEES ARE REQUIRED TO INDICATE ONE CHOICE ONLY.

12. ON THE EVIDENCE BEFORE US WE NOT ONLY CONSIDER AN ADDITIONAL VOTE TO BE NECESSARY TO DETERMINE THE TRUE WISHES OF EMPLOYEES BUT THE BOARD WOULD BE GUILTY OF IGNORING THE TRUE WISHES OF THE EMPLOYEES AS ALREADY EXPRESSED, IF IT WERE TO DISMISS THE APPLICATION AT THIS STAGE AND THEREBY DEPRIVE THE EMPLOYEES OF UNION REPRESENTATION EVEN THOUGH THE MAJORITY HAVE CLEARLY INDICATED THAT THEY DESIRE UNION REPRESENTATION.

13. FOR THE ABOVE REASONS AND IN ORDER TO GIVE EFFECT TO THE PURPOSE AND INTENT OF SECTIONS 92(5) AND 92(6) OF THE ACT, WE DIRECT THAT THE REGISTRAR CAUSE THE BALLOTS CAST IN THE REPRESENTATION VOTE THAT WAS CONDUCTED ON MAY 8, 1972 TO BE COUNTED AND REPORT TO THE BOARD.

14. AT THE HEARING THE RESPONDENT RESERVED ITS RIGHT TO MAKE SUBMISSIONS ON THE APPROPRIATENESS OF THE BARGAINING UNIT IN THIS MATTER. IF THE RESPONDENT, WITHIN THE TIME LIMITS SET OUT IN THE REPORT OF THE RETURNING OFFICER WHICH WILL BE ISSUED FOLLOWING THE COUNT OF THE BALLOTS CAST IN THIS MATTER, REQUESTS IN WRITING THAT IT BE GIVEN AN OPPORTUNITY TO MAKE ADDITIONAL REPRESENTATIONS ON THE COMPOSITION OF THE BARGAINING UNIT AND IF IT SETS OUT THE NATURE OF ITS REQUEST WHEREIN THE GROUNDS FOR THE REQUEST ARE OUTLINED, A FURTHER HEARING WILL BE CONVENED TO INQUIRE INTO SUCH MATTERS.

15. SIMILARLY, IF A THIRD REPRESENTATION VOTE IS REQUIRED TO DETERMINE THE TRUE WISHES OF THE EMPLOYEES AND INTERVENER #2 MAKES A WRITTEN REQUEST TO MAKE SUBMISSIONS CONCERNING THE FIXING OF THE DATE FOR DETERMINING THE EMPLOYEES IN THE VOTING CONSTITUENCY, AN OPPORTUNITY WILL BE AFFORDED THE PARTIES TO MAKE THEIR REPRESENTATIONS ON THAT MATTER.

16. THE MATTER IS REFERRED TO THE REGISTRAR.

1704-71-U: CSAO NATIONAL (INC.) (COMPLAINANT) V. OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: S. T. GOUDGE, T. O'DELL AND JOHN ISBER FOR THE COMPLAINANT; D. CHURCHILL-SMITH, Q.C., K. BILLINGS AND G. V. MOOGK FOR THE RESPONDENT.

DECISION OF THE BOARD:

JUNE 22, 1972.

1. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT THE RESPONDENT CONTRAVENED THE PROVISIONS OF SECTION 70(2) OF THE ACT.

2. SECTION 70(2) OF THE ACT READS AS FOLLOWS:

WHERE A TRADE UNION HAS APPLIED FOR CERTIFICATION AND NOTICE THEREOF FROM THE BOARD HAS BEEN RECEIVED BY THE EMPLOYER, NO EMPLOYER SHALL, EXCEPT WITH THE CONSENT OF THE TRADE UNION, ALTER THE RIGHTS, PRIVILEGES OR DUTY OF THE EMPLOYER OR THE EMPLOYEES UNTIL,

(A) THE TRADE UNION HAS GIVEN NOTICE UNDER SECTION 13, IN WHICH CASE SUBSECTION 1 APPLIES; OR

(B) THE APPLICATION FOR CERTIFICATION BY THE TRADE UNION IS DISMISSED OR TERMINATED BY THE BOARD, OR WITHDRAWN BY THE TRADE UNION.

3. THE VIOLATION ALLEGED BY THE COMPLAINANT IS THAT THE RESPONDENT ON OR ABOUT JANUARY 17, 1972 ALTERED THE HOURS OF WORK TO WHICH THE GRIEVOR WAS SUBJECT WITHOUT THE CONSENT OF THE COMPLAINANT TRADE UNION AT A TIME WHEN NO NOTICE HAD BEEN GIVEN BY THE COMPLAINANT UNDER SECTION 13 OF THE ACT AND WHEN THE APPLICATION FOR CERTIFICATION WHICH WAS MADE BY THE COMPLAINANT ON DECEMBER 4, 1970 HAD NOT BEEN DISMISSED OR TERMINATED BY THE BOARD OR WITHDRAWN BY THE TRADE UNION.

4. THE RESPONDENT RAISED IN ITS REPLY ALTERNATE GROUNDS UPON WHICH IT BASED IT SUBMISSIONS THAT NO VIOLATION OF THE ACT HAD OCCURRED. ONE OF THESE GROUNDS WAS THAT THE APPLICATION FOR CERTIFICATION MADE BY THE RESPONDENT HAD BEEN DISMISSED BY THE BOARD PRIOR TO THE OCCURRENCE OF THE MATTER COMPLAINED OF AND THAT THEREFORE THERE COULD HAVE BEEN NO INFRACTION OF SECTION 70(2) OF THE ACT. THE RESPONDENT STATED AT THE HEARING THAT THIS ARGUMENT INVOLVED LEGAL NICETIES AND THAT IT DID NOT INTEND TO PURSUE THE MATTER FURTHER. NOTWITHSTANDING THE POSITION TAKEN BY COUNSEL FOR THE RESPONDENT, THERE REMAINS THE FACT THAT THE APPLICATION WAS IN FACT DISMISSED BY THE BOARD IN ITS DECISION DATED FEBRUARY 19, 1971. ON THE WORDING OF THE SECTION, IT IS CLEAR THAT NO VIOLATION OF SECTION 70(2) CAN OCCUR WHERE,

ABSENT NOTICE UNDER SECTION 70(2)(A), THE APPLICATION HAS BEEN DISMISSED BY THE BOARD. THE BOARD'S DECISION OF FEBRUARY 19, 1971 THEREFORE AFFECTS AN ESSENTIAL INGREDIENT OF THE OFFENCE CREATED BY THE SECTION. AS SUCH IT CANNOT BE IGNORED BY THE BOARD.

5. THE DECISION OF THE BOARD ABOVE MENTIONED WAS BROUGHT BEFORE THE SUPREME COURT OF ONTARIO BY CSAO NATIONAL INC. ON A MOTION TO QUASH THE DECISION. THE MOTION WAS DISMISSED. CSAO THEN BROUGHT THE MATTER BEFORE THE COURT OF APPEAL. THE COURT OF APPEAL ALLOWED THE APPEAL, SET ASIDE THE ORDER OF LACOURCIERE J. AND ISSUED AN ORDER QUASHING THE DECISION OF THE BOARD AND REMITTING TO IT THE APPLICATION FOR CERTIFICATION. THE ACTION COMPLAINED OF IN THE PRESENT APPLICATION COMMENCED ON JANUARY 17, 1972, A DAY BEFORE THE DECISION OF THE COURT OF APPEAL WAS RELEASED.

6. THE BOARD FINDS THAT AT THE TIME THE ACTION COMPLAINED OF OCCURRED, THE APPLICATION FOR CERTIFICATION BY THE TRADE UNION HAD BEEN DISMISSED BY THE BOARD ON FEBRUARY 19, 1972 AND THAT, CONSEQUENTLY, THERE HAS BEEN NO VIOLATION OF SECTION 70(2) OF THE ACT.

7. THE COMPLAINT IS THEREFORE DISMISSED.

1006-71-M: R. W. S. DELIVERY SERVICES LIMITED (EMPLOYER) V. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (TRADE UNION) V. SWISS CHALET BAR-B-Q A DIVISION OF HARVEY'S FOODS LIMITED (ADDED PARTY).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: K. G. SCOTT AND L. BOJAS FOR THE EMPLOYER; T. E. ARMSTRONG AND G. HARRISON FOR THE TRADE UNION; JOHN O'DONOGHUE FOR THE ADDED PARTY.

DECISION OF THE BOARD: JUNE 22, 1972.

1. THIS IS A REFERENCE FROM THE MINISTER OF LABOUR UNDER SECTION 96 OF THE LABOUR RELATIONS ACT. THE QUESTION IS AS TO WHETHER THE MINISTER HAS THE AUTHORITY UNDER THE ACT TO APPOINT A CONCILIATION OFFICER.

2. BY ORDER OF THE BOARD DATED JANUARY 13, 1972, SWISS CHALET BAR-B-Q A DIVISION OF HARVEY'S FOODS LIMITED, HEREINAFTER REFERRED TO AS "SWISS CHALET", WAS ADDED AS A PARTY TO THESE PROCEEDINGS.

3. BY CERTIFICATE DATED 2ND JULY, 1971, THE BOARD CERTIFIED MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, HEREINAFTER REFERRED TO AS THE "UNION", AS BARGAINING AGENT OF ALL COMMISSION DRIVERS OF SWISS CHALET WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

4. THE UNION HAS NOT BEEN CERTIFIED AS BARGAINING AGENT FOR EMPLOYEES OF R. W. S. DELIVERY SERVICES LIMITED, HEREINAFTER REFERRED TO AS "R.W.S." THEIR CLAIM TO REPRESENT EMPLOYEES OF R.W.S. IS BASED UPON THE ALLEGATION THAT A SALE WITHIN THE MEANING OF SECTION 55 TOOK PLACE BETWEEN SWISS CHALET AND R.W.S.

5. AT THE TIME THAT THE CERTIFICATE REFERRED TO ABOVE WAS ISSUED BY THE BOARD, SWISS CHALET DIRECTLY EMPLOYED THE PERSONS COMPRISING THE BARGAINING UNIT REFERRED TO IN THE CERTIFICATE AS DELIVERY DRIVERS FOR ITS PRODUCTS.

6. ON OR ABOUT JULY 16, 1971, ROBERT W. STANDING, WHO HAD BEEN WITH SWISS CHALET SINCE 1967 AS A SUPERVISOR, INCORPORATED R.W.S. NO FORMAL AGREEMENT WAS ENTERED INTO BETWEEN R.W.S. AND SWISS CHALET AND DURING STANDING'S CONNECTION WITH R.W.S. DELIVERIES WERE MADE ONLY WITH RESPECT TO ONE SWISS CHALET OUTLET IN THE WEST END OF METROPOLITAN TORONTO. THERE WAS NO EVIDENCE OF ANY CONSIDERATION PASSING FROM R.W.S. TO SWISS CHALET.

7. ON OR ABOUT AUGUST 16, 1971, LEWIS BOJAS PURCHASED R.W.S. FROM STANDING. AT THE TIME OF THE PURCHASE, BOJAS WAS A DELIVERY DRIVER WITH SWISS CHALET. ON THE SAME TIME, PERSONS EMPLOYED AS DRIVERS BY SWISS CHALET RESIGNED AND BECAME EMPLOYEES OF R.W.S. STANDING THEN RE-ENTERED THE EMPLOYMENT OF SWISS CHALET AS ADVERTISING MANAGER.

8. BEFORE PURCHASING R.W.S. FROM STANDING, BOJAS SPOKE TO MARTIN SIRON, PRESIDENT OF SWISS CHALET, FOR THE PURPOSE OF DETERMINING WHETHER HE MIGHT EXPECT TO OBTAIN A CONTRACT FOR DELIVERY SERVICE FROM SWISS CHALET IN THE EVENT THAT HE COMPLETED THE SALE WITH STANDING. ON RECEIPT OF SIRON'S ASSURANCES THAT HE WOULD GET THE BUSINESS, BOJAS SUBMITTED AN OFFER TO STANDING TO PURCHASE THE BUSINESS. THIS OFFER WAS CONVEYED PERSONALLY BY SIRON TO STANDING AND WAS ACCEPTED BY HIM.

9. R.W.S. AND SWISS CHALET SIGNED A CONTRACT ON AUGUST 23, 1971 BY WHICH R.W.S. AGREED TO PROVIDE DELIVERY SERVICE FOR ALL SWISS CHALET OUTLETS THEN AND THEREAFTER OPERATING IN METROPOLITAN TORONTO. THIS INVOLVED COVERAGE BY R.W.S. OF ALL TERRITORIES PREVIOUSLY COVERED BY SWISS CHALET TOGETHER WITH THE WEST END STORE WHICH R.W.S. WAS SERVICING AT THE TIME OF ITS SALE TO BOJAS. THE DRIVERS EMPLOYED BY SWISS CHALET RESIGNED AND WERE IMMEDIATELY RE-EMPLOYED BY R.W.S. WHICH PAYS THEM THEIR COMMISSION IN ACCORDANCE WITH CONTRACTS MADE BETWEEN EACH DRIVER AND R.W.S. THERE ARE SOME DIFFERENCES IN THE CONTRACTS OF EMPLOYMENT WHICH THE DRIVERS SIGNED WITH SWISS CHALET AND THOSE WHICH THEY SIGNED WITH R.W.S. INTO WHICH IT IS NOT NECESSARY TO DELVE IN THE PRESENT REFERENCE.

10. FOLLOWING THE COMPLETION OF THE CONTRACT BETWEEN R.W.S. AND SWISS CHALET, THE PHYSICAL METHOD OF OPERATING THE DELIVERY SERVICE REMAINED ALMOST EXACTLY THE SAME AS THAT USED WHEN THE SERVICE WAS DIRECTLY UNDER THE CONTROL OF SWISS CHALET. THE DIFFERENCE IN THE DAY TO DAY OPERATIONS LIES IN THE FACT THAT WHEREAS PRIOR TO THE CONTRACT SWISS CHALET DRIVERS WERE DIRECTED BY THAT COMPANY'S DISPATCHER, THE DRIVERS ARE NOW CONTROLLED AND DISPATCHED BY R.W.S. IN THE PERSON OF BOJAS.

11. R.W.S. OPERATES OUT OF THE SAME SWISS CHALET PREMISES AS WERE UTILIZED BY SWISS CHALET WHEN IT CONDUCTED THE DELIVERY SERVICE ON ITS OWN BEHALF. THESE PREMISES ARE PROVIDED, UNDER THE TERMS OF THE CONTRACT, RENT FREE TO R.W.S. THE LATTER ALSO MAKES USE OF SWISS CHALET TELEPHONES AND FURNISHINGS AND FROM TIME TO TIME AN ADDING MACHINE IS BORROWED BY R.W.S. FROM SWISS CHALET.

12. IN THE VIEW OF THE BOARD THE EVIDENCE DOES NOT ESTABLISH THAT A SALE WITHIN THE DEFINITION OF SECTION 55 OF THE ACT OCCURRED AT ANYTIME BETWEEN SWISS CHALET AND R.W.S. WHAT HAS HAPPENED IS THAT SWISS CHALET HAS CHANGED ITS METHOD OF EFFECTING DELIVERY OF ITS PRODUCTS BY CONTRACTING WITH R.W.S. FOR THE PERFORMANCE OF THAT SERVICE. THE DELIVERY TASKS FORMERLY PERFORMED BY SWISS CHALET THROUGH ITS EMPLOYEE DRIVERS ARE NOW PERFORMED THROUGH THE AGENCY OF R.W.S. WHICH USES PERSONS UNDER DIRECT CONTRACT TO IT.

13. IN VIEW OF THE ABOVE FINDING, THE ANSWER TO THE QUESTION POSED BY THE MINISTER IS "NO".

1632-71-R: DIAMOND "Z" ASSOCIATION (APPLICANT) V. ZEHR'S MARKETS LIMITED (RESPONDENT) V. CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (INTERVENER #1) V. CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 633, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (INTERVENER #2) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #3).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS F.W. MURRAY AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: M.J. VILLEMAIRE, Q.C. AND TED DALE FOR THE APPLICANT; W. GIBSON GRAY, Q.C. AND VERNON BARNETT FOR THE RESPONDENT; NO ONE APPEARING FOR INTERVENER #1; NO ONE APPEARING FOR INTERVENER #2; CLIFFORD EVANS AND HAROLD JURCHUK FOR INTERVENER #3.

DECISION OF THE BOARD:

JUNE 22, 1972.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH BOTH THE STATUS OF THE APPLICANT AS A TRADE UNION AND ITS ABILITY TO OBTAIN A CERTIFICATE AS A RESULT OF SECTION 12 OF THE LABOUR RELATIONS ACT WERE CHALLENGED. INTERVENER #3 CONTENDED THAT THE APPLICANT WAS INFLUENCED IN ITS FORMATION BY CERTAIN ACTIONS OF MANAGEMENT. AFTER CONSIDERING THE EVIDENCE WE ARE SATISFIED THAT EVEN ASSUMING THAT THE CONDUCT OF THE COMPANY CONSTITUTED MANAGERIAL INFLUENCE WITH RESPECT TO THE FORMATION OF A PREDECESSOR ORGANIZATION TO THE APPLICANT, THEN SUCH INFLUENCE WOULD HAVE DISSIPATED AT THE TIME OF THE FORMATION OF THE APPLICANT, AND EVEN ASSUMING THE CONNECTION BETWEEN THE APPLICANT AND THE PREDECESSOR ORGANIZATION THE APPLICANT HAS "MADE A TRANSITION FROM BEING AN ORGANIZATION THAT FELL WITHIN THE MISCHIEF OF (SECTION 12)...TO A STAGE WHERE IT COULD BE SAID TO BE FREELY CHOSEN BY THE EMPLOYEES". CANADIAN FABRICATED PRODUCTS LTD. [1955] 55 CLLC ¶18,003 (OLRB). ACCORDINGLY, THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. WE NOW TURN TO THE OTHER ALLEGATIONS MADE TO INTERVENER #3 WITH RESPECT TO THE MEMBERSHIP EVIDENCE AND IN THIS REGARD WE ARE SATISFIED THAT MEMBERSHIP EVIDENCE WAS SUBMITTED ON BEHALF OF TWO PERSONS WHO DID NOT PAY A DOLLAR. MR. TED DALE, THE PRESIDENT OF THE APPLICANT AND THE PERSON WHO SIGNED THE FORM 8, KNOW THAT ONE EMPLOYEE DID NOT PAY A DOLLAR AND FAILED TO MAKE INQUIRIES FROM THE COLLECTOR WHO WAS A VICE-PRESIDENT OF THE APPLICANT IN THE OTHER CASE.

3. THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, WHICH IS KNOWN AS FORM 8, CONTAINS THE FOLLOWING STATEMENT:

3. (WHERE THE DOCUMENTARY EVIDENCE CONSISTS IN PART OF RECEIPTS OR OTHER ACKNOWLEDGMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES). ON THE BASIS OF MY PERSONAL KNOWLEDGE AND INQUIRIES THAT I HAVE MADE, I STATE THAT THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS OR OTHER ACKNOWLEDGEMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES ARE THE PERSONS WHO ACTUALLY COLLECTED THE MONEYS PAID ON ACCOUNT OF DUES OR INITIATION FEES AND THAT EACH MEMBER, ON WHOSE BEHALF A RECEIPT OR AN ACKNOWLEDGMENT OF PAYMENT IS SUBMITTED HAS PERSONALLY PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT OR ACKNOWLEDGMENT OF PAYMENT AS COLLECTOR, EXCEPT IN THE FOLLOWING INSTANCES:

THAT DECLARATION PROVIDES FOR EXCEPTIONS AND NO EXCEPTIONS WERE INDICATED IN THE FORM 8.

4. THERE ARE A NUMBER OF CASES BEFORE THIS BOARD DEALING WITH FORM 8 (FORMERLY FORM 9). THOSE CASES INDICATE THAT THE BOARD HAS EXACTED VERY STRINGENT STANDARDS FROM APPLICANTS WHO SUBMIT MEMBERSHIP EVIDENCE. THESE STRINGENT REQUIREMENTS ARE NECESSARY BECAUSE THE MEMBERSHIP EVIDENCE OR RECORDS OF TRADE UNIONS RELATING TO MEMBERSHIP FALL WITHIN THE SECRECY REQUIREMENTS OF SECTION 100 OF THE LABOUR RELATIONS ACT. OTHER PARTIES TO A CERTIFICATION PROCEEDING DO NOT HAVE THE OPPORTUNITY TO EXAMINE THE MEMBERSHIP EVIDENCE NOR IN THE USUAL CASE DO THE PARTIES HAVE THE OPPORTUNITY TO CROSS-EXAMINE WITNESSES WITH RESPECT TO THE MEMBERSHIP EVIDENCE. IT IS IN THOSE CIRCUMSTANCES THAT THE BOARD APPROACHES ITS STATUTORY RESPONSIBILITY UNDER SECTION 7 OF THE ACT AND ACCORDINGLY IS EXTREMELY VIGILANT IN ENSURING THE PROPRIETY OF MEMBERSHIP EVIDENCE. SINCE THE BOARD IN TURN MUST RELY ON THE EVIDENCE OF MEMBERSHIP TENDERED BY THE APPLICANT TRADE UNION THE BOARD HAS EXACTED STRICT REQUIREMENTS FROM APPLICANT TRADE UNIONS WITH RESPECT TO THAT MEMBERSHIP EVIDENCE AND PARTICULARLY WITH THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 8).

5. THE DECLARATION, FORM 8, "GOES TO THE VERY ROOT OF THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT". CANADIAN UNION OF OPERATING ENGINEERS. V. THE STANLEY STEEL COMPANY LIMITED V. UNITED STEELWORKERS OF AMERICA [1972] OLRB REP. 181; AND THE CASES BEFORE THIS BOARD HAVE INDICATED THAT THERE

MUST BE COMPLIANCE WITH THE REQUIREMENTS OF FORM 8 AND COMPLETE DISCLOSURE MUST BE MADE. SEE E.G., STANLEY STEEL COMPANY LIMITED, SUPRA; UNITED STEELWORKERS OF AMERICA V. NATIONAL STEEL CAR CORPORATION LIMITED [1966] OLRB REP. 738; VALLEY TRANSPORTATION COMPANY LIMITED [1963] OLRB REP. 448; RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC V. DOMINION STORES LIMITED [1964] OLRB REP. 447; INTERNATIONAL ASSOCIATION OF MACHINISTS V. ESSEX WIRE CORPORATION LIMITED V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 141, AFFILIATED WITH THE I.B. OF T.C.W. & H. OF A. [1965] OLRB REP. 490; AND WHERE COMPLIANCE WITH THE DIRECTIONS OF FORM 8 AND THE STANDARDS OF ACCURACY AND DISCLOSURE CONTAINED THEREIN WERE NOT MET THE BOARD HAS INVARIABLY FOUND THAT THERE IS NOT SUFFICIENTLY RELIABLE EVIDENCE CONCERNING MEMBERSHIP DOCUMENTS.

6. APPLYING THOSE CONSIDERATIONS TO THE FACTS OF THIS CASE WE FIND THAT THE DECLARATION, FORM 8, HAS NOT MET THE STANDARDS REQUIRED BY THIS BOARD AND EVEN THOUGH THE STANDARDS WERE UNWITTINGLY DEPARTED FROM, WE ARE NOT PREPARED TO MAKE AN EXCEPTION IN THE CIRCUMSTANCES OF THIS CASE. ACCORDINGLY, WE DECLINE TO ACCEPT THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT TRADE UNION AND THE APPLICATION IS ACCORDINGLY DISMISSED.

1577-71-R: ONTARIO HOUSING CORPORATION EMPLOYEES LOCAL 767, CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. DEL ZOTTO PROPERTY MANAGEMENT (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. ADE.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER E. BOYER:
JUNE 16, 1972.

1. PURSUANT TO THE DECISION OF THE BOARD IN THIS MATTER DATED MAY 31, 1972, WE ARE NOW IN RECEIPT OF THE WRITTEN REPRESENTATIONS FILED BY THE PARTIES CONCERNING THE CONCLUSIONS TO BE DRAWN FROM THE REPORT OF THE EXAMINER HEREIN DATED APRIL 5TH, 1972, AS SUPPLEMENTED BY THE STATEMENT OF ALEXANDER T. THOMSON.

2. IN THIS APPLICATION FOR CERTIFICATION, THE APPLICANT IS SEEKING BARGAINING RIGHTS ON BEHALF OF AN "ALL EMPLOYEE" UNIT EMPLOYED BY THE RESPONDENT IN ITS CARETAKING AND CLEANING OPERATIONS AT ITS GLEN PARK APARTMENTS IN THORNHILL. THE RESPONDENT, ON THE OTHER HAND PROPOSES THAT THE UNIT SHOULD EMBRACE VARIOUS OF ITS EMPLOYEES EMPLOYED IN METROPOLITAN TORONTO

AND WITHIN A 25 MILE EXTENSION FROM THE BOUNDARIES THEREOF. IN THE ALTERNATIVE, THE RESPONDENT SUGGESTS THAT THE BOARD'S GEOGRAPHIC AREA #8, AS USED IN CONSTRUCTION CASES BE UTILIZED IN THESE CIRCUMSTANCES. IN THE FURTHER ALTERNATIVE, THE RESPONDENT SUBMITS THAT SHOULD THE BOARD CONFINE THE GEOGRAPHIC AREA TO THE RESPONDENT'S CONDOMINIUM UNIT AT THORNHILL, THEN THE UNIT SHOULD BE LIMITED TO ONLY THE RESIDENT SUPERINTENDENTS EMPLOYED THEREIN.

3. IN THIS CONNECTION, WE NOTE THAT THE RESPONDENT HAS MADE ANALOGOUS REPRESENTATIONS IN ANOTHER APPLICATION FOR CERTIFICATION PRESENTLY PENDING BEFORE THIS SAME PANEL OF THE BOARD (BOARD FILE No. 1666-71-R) WHICH WAS FILED BY LOCAL 204 OF THE SERVICE EMPLOYEES UNION ON BEHALF OF THE CLEANING STAFF OF THE RESPONDENT EMPLOYED AT YORK CONDOMINIUM CORPORATION No. 42 IN METROPOLITAN TORONTO.

4. THE RESPONDENT IS ENGAGED IN THE BUSINESS OF THE MANAGEMENT OF PROPERTY, RENTAL AND MAINTENANCE OF BUILDINGS AND IN THIS CONNECTION MANAGES, INTER ALIA, THE GLEN PARK APARTMENTS SITUATE IN THE MUNICIPALITY OF THORNHILL.

5. ULTIMATE RESPONSIBILITY FOR ALL OF THE PROPERTIES MANAGED BY THE RESPONDENT RESTS WITH THE GENERAL PROPERTY MANAGER. REPORTING TO HIM, ARE THE CONTROLLER, THE ASSISTANT GENERAL PROPERTY MANAGER AND THE RESPECTIVE PROPERTY MANAGERS. ALL OF THESE PERSONS WORK OUT OF THE RESPONDENT'S CENTRAL OFFICE LOCATED AT 4800 DUFFERIN STREET IN TORONTO. IN ADDITION, THE RESPONDENT EMPLOYS A SEPARATE GENERAL MAINTENANCE STAFF WHO SERVICE ALL PROPERTIES. THIS CREW (WHICH INCLUDES PLUMBERS, CARPENTERS, GROUNDSMEN AND NIGHT WATCHMEN IN LARGER COMPLEXES), WORKS OUT OF A CENTRAL LOCATION SITUATE AT 1577 LAWRENCE AVENUE WEST IN TORONTO. THESE TRADESMEN, IN EFFECT PERFORM WORK, WHEN DISPATCHED TO THE VARIOUS PROJECTS THAT THE RESIDENT SUPERVISORS AND CLEANERS CANNOT PERFORM. THEY ARE RESPONSIBLE TO THE ASSISTANT GENERAL MANAGER.

6. IN ADDITION TO UTILIZING THE CENTRAL OFFICE AS INDICATED ABOVE, THE INDIVIDUAL PROPERTY MANAGERS ALSO WORK OUT OF THE VARIOUS RENTAL OFFICES LOCATED IN THE RESPECTIVE BUILDINGS ASSIGNED TO THEM. THESE INDIVIDUALS, WHO MAY AT ANY ONE TIME BE RESPONSIBLE FROM ONE UP TO SIX LOCATIONS, PROVIDE, IN EFFECT, THE "ON SITE" MANAGEMENT OF THE PARTICULAR APARTMENTS COMING WITHIN THEIR JURISDICTION.

7. REPORTING DIRECTLY TO THEIR RESPECTIVE PROPERTY MANAGERS, ARE THE RESIDENT SUPERINTENDENTS, WHO TOGETHER WITH THE CLEANERS, SECURITY GUARDS AND LIFE GUARDS, ARE INCLUDED IN THE "PERMANENT" PROPERTY STAFF OF EACH COMPLEX OR PROJECT. HOWEVER, AS REGARDS THE GLEN PARK PROJECT IN THORNHILL, THE EVIDENCE DISCLOSES THAT AS OF THE DATE OF THE FILING OF THIS APPLICATION, THERE ARE NO

CLEANERS PRESENTLY EMPLOYED THEREIN. IN OTHER WORDS, IT WOULD APPEAR THAT ALL CLEANING FUNCTIONS ARE PERFORMED BY THE RESIDENT SUPERINTENDENTS SINCE THE OPENING SOMETIME LAST SUMMER, OF THIS APARTMENT COMPLEX CONSISTING OF FOUR SEPARATE BUILDINGS.

8. THE FIRST ISSUE TO BE RESOLVED BY THE BOARD CONCERNS THE DETERMINATION OF THE GEOGRAPHIC AREA OF THE BARGAINING UNIT WHICH IN THE SUBMISSION OF THE RESPONDENT, SHOULD ENCOMPASS THE AREA OF METROPOLITAN TORONTO PLUS A TWENTY-FIVE MILE EXTENSION FROM THE BOUNDARIES THERETO. IT IS CLEAR THAT IN THE PAST, THE POLICY OF THE BOARD, IN THE ABSENCE OF ANY INTERCHANGE OF EMPLOYEES OR OTHER COMPELLING REASONS, HAS BEEN TO RESTRICT OR CONFINE THE GEOGRAPHIC AREA OF THE BARGAINING UNIT TO EMPLOYEES WORKING IN A SPECIFIC MUNICIPALITY. (SEE FOR EXAMPLE, THE WITTICH'S BREAD LIMITED CASE OLRB M.R. JANUARY 1969 AT P. 1019; THE GEORGE LANTHIER & FILS LIMITEE CASE [1971] OLRB REP. (SEPTEMBER) AT P. 614 AND THE RECENT CANADA SAFEWAY LIMITED CASE [1972] OLRB REP. 262.

9. COUNSEL FOR THE RESPONDENT, HOWEVER, ARGUES THAT THESE CASES REJECTING MULTI-LOCATION BARGAINING UNITS ARE DISTINGUISHABLE ON THE BASIS THAT THE "RESPONDENT NEITHER HAS WIDELY SEPARATED LOCALITIES" (E.G. THE RESPONDENT'S LOCATIONS ARE MUCH CLOSER TOGETHER AND MANY OF THEM BEING WITHIN THE GEOGRAPHIC BOUNDARY OF METRO), "NOR IS IT IMPRATICAL FROM THE EMPLOYER'S POINT OF VIEW TO INTERCHANGE GROUPS OF EMPLOYEES WITHIN THE LOCALITY OF ITS OPERATION."

10. HOWEVER, UPON CAREFULLY REVIEWING THE TOTALITY OF THE EVIDENCE IN THIS REGARD, WE ARE NOT PREPARED TO FIND ANY SUBSTANTIAL REGULAR INTERCHANGE OF PERSONNEL WARRANTING A FINDING OF A MULTI-LOCATION BARGAINING UNIT AS APPROPRIATE IN THESE CIRCUMSTANCES, NOR DO WE FIND IN THIS REGARD THAT THE "FACT THAT THE GLEN PARK PROJECT IS MERELY ON THE FRINGE OF METROPOLITAN TORONTO'S BOUNDARIES AND HAS A HIGHER DEGREE OF PROXIMITY TO CENTRAL OFFICE THEN MOST OF THE OTHER LOCATIONS", A COMPELLING REASON FOR ACCEDING TO THE REQUEST FOR THE GEOGRAPHICAL AREA AS PROPOSED. ACCORDINGLY, WE ARE NOT PREPARED IN THESE CIRCUMSTANCES, TO EXTEND THE NORMAL MUNICIPAL AREA OF METROPOLITAN TORONTO GRANTED BY THE BOARD UNDER THE GENERAL "NON-CONSTRUCTION INDUSTRY" PROVISIONS OF THE ACT.

11. HAVING REGARD THEREFORE TO THE TOTALITY OF THE EVIDENCE PRESENTED IN THESE PROCEEDINGS AND APPLYING THE USUAL FACTORS WHICH THE BOARD HAS TAKEN INTO ACCOUNT IN DETERMINING APPROPRIATE BARGAINING UNITS IN PREVIOUS CASES AS OUTLINED IN THE COMMONWEALTH HOLIDAY INNS OF CANADA LIMITED CASE OLRB M.R. OCTOBER, 1970, P. 749, WE ARE NOT PERSUADED THAT THERE EXISTS A COMMUNITY OF

INTEREST BETWEEN THE CLEANING STAFF EMPLOYED EXCLUSIVELY BY THE RESPONDENT AT THE GLEN PARK PROJECT, WITH THE REMAINDER OF ITS EMPLOYEES ON THE OTHER HAND INCLUDING THE GENERAL MAINTENANCE STAFF REFERRED TO IN PARAGRAPH #5 HEREIN.

12. HAVING REGARD TO ALL OF THE PARTICULAR CIRCUMSTANCES OF THIS CASE, THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN CLEANING OPERATIONS AT GLEN PARK APARTMENTS, AT THORNHILL SAVE AND EXCEPT THE PROPERTY MANAGER, PERSONS ABOVE THE RANK OF PROPERTY MANAGER, AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

13. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAN MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 21, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION, AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

14. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. ADE: JUNE 16, 1972.

I DISSENT FOR REASONS TO BE GIVEN LATER IN WRITING.

1666-71-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. DEL ZOTTO PROPERTY MANAGEMENT (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. ADE.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBERS E. BOYER: JUNE 16, 1972.

1. PURSUANT TO THE DECISION OF THE BOARD DATED MARCH 16, 1972, THE EXAMINER CONVENED A MEETING OF THE PARTIES CULMINATING IN THE EXAMINER'S REPORT HEREIN DATED MAY 18, 1972.

2. THE BOARD IS NOW IN RECEIPT OF WRITTEN REPRESENTATIONS FILED BY THE PARTIES WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE SAID REPORT OF THE EXAMINER. HOWEVER, NO REQUEST FOR A HEAR-

ING HAS BEEN MADE IN THIS REGARD. WE SHALL THEREFORE PROCEED TO DISPOSE OF ALL ISSUES RAISED IN THIS APPLICATION HAVING REGARD TO ALL OF THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES PRESENTLY BEFORE US.

3. IN THIS APPLICATION FOR CERTIFICATION, THE APPLICANT SEEKS A BARGAINING UNIT OF CLEANING STAFF AT YORK CONDOMINIUM CORPORATION No. 42 SITUATE AT 330 DIXON ROAD IN METROPOLITAN TORONTO. THE RESPONDENT, ON THE OTHER HAND, PROPOSES A BARGAINING UNIT CONSISTING OF ALL STAFF EMPLOYED IN METROPOLITAN TORONTO AND THE 25-MILE EXTENSION FROM THE BOUNDARIES THEREOF OR IN THE BOARD'S GEOGRAPHIC AREA No. 8 OR IN METROPOLITAN TORONTO. ALTERNATIVELY, THE RESPONDENT REQUESTS A UNIT IN THE SAME TERMS AS THAT PROPOSED BY THE APPLICANT.

4. IN THIS CONNECTION, WE NOTE THAT THE RESPONDENT HAS MADE ANALOGOUS REPRESENTATIONS IN ANOTHER APPLICATION FOR CERTIFICATION PRESENTLY PENDING BEFORE THIS SAME PANEL OF THE BOARD (BOARD FILE No. 1577-71-R) WHICH WAS FILED BY LOCAL 767 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES ON BEHALF OF AN ALL EMPLOYEE UNIT OF THE RESPONDENT ENGAGED IN ITS CARETAKING AND CLEANING OPERATIONS AT ITS GLEN PARK APARTMENTS IN THORNHILL.

5. THE EVIDENCE ESTABLISHES THAT THE RESPONDENT IS ENGAGED IN THE BUSINESS OF THE MANAGEMENT OF PROPERTY, RENTAL AND MAINTENANCE OF BUILDINGS. IN THIS CONNECTION, THE RESPONDENT MANAGES, INTER ALIA, THREE REGISTERED CONDOMINIUMS IN METROPOLITAN TORONTO. ONE OF THESE CONDOMINIUMS OPERATES UNDER THE NAME OF YORK CONDOMINIUM CORPORATION No. 42, (HEREINAFTER REFERRED TO AS YORK) A COMPLEX OR PROJECT CONSISTING OF THREE APARTMENT BUILDINGS SITUATED IN METROPOLITAN TORONTO. THE RESPONDENT HAS MANAGED THESE BUILDINGS SINCE MAY OF 1971 AND CONTINUES TO DO SO UP TO THE PRESENT TIME FOLLOWING THE LATTER'S REGISTRATION AS A CONDOMINIUM CORPORATION IN AUGUST OF 1971. THE RESPONDENT HAS A SEPARATE CONTRACT WITH YORK FOR THE MAINTENANCE OF ITS BUILDINGS THE OFFICES OF WHICH ARE CONTROLLED BY A BOARD OF DIRECTORS ELECTED BY THE UNIT OWNERS.

6. ULTIMATE RESPONSIBILITY FOR ALL OF THE PROPERTIES MANAGED BY THE RESPONDENT RESTS WITH THE GENERAL PROPERTY MANAGER. REPORTING TO HIM, ARE THE CONTROLLER, THE ASSISTANT GENERAL PROPERTY MANAGER AND THE RESPECTIVE PROPERTY MANAGERS. ALL OF THESE PERSONS WORK OUT OF THE RESPONDENT'S CENTRAL OFFICE LOCATED AT 4800 DUFFERIN STREET IN TORONTO. IN ADDITION, THE RESPONDENT EMPLOYS A SEPARATE GENERAL MAINTENANCE STAFF WHO SERVICE ALL PROPERTIES. THIS CREW (WHICH INCLUDES PLUMBERS, CARPENTERS, GROUNDSMEN AND NIGHT WATCHMEN IN LARGER COMPLEXES), WORKS OUT OF A CENTRAL LOCATION SITUATE AT 1577 LAWRENCE AVENUE WEST IN TORONTO. THESE TRADESMEN, IN EFFECT PERFORM WORK, WHEN DISPATCHED TO THE VARIOUS PROJECTS THAT THE RESIDENT SUPERVISORS

AND CLEANERS CANNOT PERFORM. THEY ARE RESPONSIBLE TO THE ASSISTANT GENERAL MANAGER.

7. IN ADDITION TO UTILIZING THE CENTRAL OFFICE AS INDICATED ABOVE, THE INDIVIDUAL PROPERTY MANAGERS ALSO WORK OUT OF THE VARIOUS RENTAL OFFICES LOCATED IN THE RESPECTIVE BUILDINGS ASSIGNED TO THEM. THESE INDIVIDUALS, WHO MAY AT ANY ONE TIME BE RESPONSIBLE FROM ONE UP TO SIX LOCATIONS, PROVIDE, IN EFFECT, THE "ON SITE" MANAGEMENT OF THE PARTICULAR APARTMENTS COMING WITHIN THEIR JURISDICTION.

8. REPORTING DIRECTLY TO THEIR RESPECTIVE PROPERTY MANAGERS, ARE THE RESIDENT SUPERINTENDENTS, WHO TOGETHER WITH THE CLEANERS, SECURITY GUARDS AND LIFE GUARDS, ARE INCLUDED IN THE "PERMANENT" PROPERTY STAFF OF EACH COMPLEX OR PROJECT. YORK IS NO EXCEPTION, AND IN THIS REGARD POSSESSES ITS OWN STAFF CONSISTING OF ONE PROPERTY MANAGER, THREE RESIDENT SUPERINTENDENTS, SIX CLEANERS AND AN UNDISCLOSED NUMBER OF SECURITY GUARDS AND LIFE GUARDS.

9. THE FIRST ISSUE TO BE RESOLVED BY THE BOARD CONCERNS THE DETERMINATION OF THE GEOGRAPHIC AREA OF THE BARGAINING UNIT WHICH IN THE SUBMISSION OF THE RESPONDENT, SHOULD ENCOMPASS THE AREA OF METROPOLITAN TORONTO PLUS A TWENTY-FIVE MILE EXTENSION FROM THE BOUNDARIES THERETO. IT IS CLEAR THAT IN THE PAST, THE POLICY OF THE BOARD, IN THE ABSENCE OF ANY INTERCHANGE OF EMPLOYEES OR OTHER COMPELLING REASONS, HAS BEEN TO RESTRICT OR CONFINED THE GEOGRAPHIC AREA OF THE BARGAINING UNIT TO EMPLOYEES WORKING IN A SPECIFIC MUNICIPALITY. (SEE FOR EXAMPLE, THE WITTICH'S BREAD LIMITED CASE OLRB M.R. JANUARY 1969 AT P. 1019; THE GEORGE LANTHIER & FILS LIMITEE CASE [1971] OLRB REP. (SEPTEMBER AT P. 614; AND THE RECENT CANADA SAFEWAY LIMITED CASE, [1972] OLRB REP. 262).

10. COUNSEL FOR THE RESPONDENT, HOWEVER, ARGUES THAT THESE CASES REJECTING MULTI-LOCATION BARGAINING UNITS ARE DISTINGUISHABLE ON THE BASIS THAT THE "RESPONDENT NEITHER HAS WIDELY SEPARATED LOCALITIES" (E.G. THE RESPONDENT'S LOCATIONS ARE MUCH CLOSER TOGETHER AND MANY OF THEM BEING WITHIN THE GEOGRAPHIC BOUNDARY OF METRO), "NOR IS IT IMPRACTICAL FROM THE EMPLOYER'S POINT OF VIEW TO INTERCHANGE GROUPS OF EMPLOYEES WITHIN THE LOCALITY OF ITS OPERATION."

11. HOWEVER, UPON CAREFULLY REVIEWING THE TOTALITY OF THE EVIDENCE IN THIS REGARD, WE ARE NOT PREPARED TO FIND ANY SUBSTANTIAL REGULAR INTERCHANGE OF PERSONNEL WARRANTING A FINDING OF A MULTI-LOCATION BARGAINING UNIT AS APPROPRIATE IN THESE CIRCUMSTANCES, NOR DO WE FIND IN THIS REGARD THAT THE RELATIVE PROXIMITY OF THE PRESENT LOCATIONS A "COMPELLING REASON" FOR ACCEDING TO THE REQUEST FOR THE GEOGRAPHIC AREA AS PROPOSED. ACCORDINGLY, WE ARE NOT PRE-

PARSED IN THESE CIRCUMSTANCES, TO EXTEND THE NORMAL MUNICIPAL AREA OF METROPOLITAN TORONTO GRANTED BY THE BOARD UNDER THE GENERAL "NON-CONSTRUCTION INDUSTRY" PROVISIONS OF THE ACT.

12. THE APPLICANT HOWEVER PROPOSES THAT THE BARGAINING UNIT IN METROPOLITAN TORONTO BE CONFINED TO A BARGAINING UNIT EMPLOYED AT THE YORK COMPLEX AT 330 DIXON ROAD AND SEEKS TO FURTHER LIMIT THE SAID UNIT TO ONLY THE CLEANERS EMPLOYED THEREIN. THE BOARD HAS CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE IN THIS REGARD AS REVEALED IN THE REPORT OF THE EXAMINER HEREIN TOGETHER WITH THE REPRESENTATIONS OF THE PARTIES THERETO AND IN THIS CONTEXT WE HAVE APPLIED THE USUAL FACTORS WHICH THE BOARD HAS TAKEN INTO ACCOUNT IN DETERMINING APPROPRIATE BARGAINING IN PREVIOUS CASES AS OUTLINED IN THE COMMONWEALTH HOLIDAY INNS OF CANADA LIMITED CASE OLRB M.R. OCTOBER, 1970, P.749. HAVING REGARD TO ALL OF THE CIRCUMSTANCES WE THEREFORE FIND THAT THERE IS NO FUNCTIONAL COHERENCE AND INTERDEPENDENCE BETWEEN THE GENERAL MAINTENANCE STAFF REFERRED TO IN PARAGRAPH NO. 6 HEREIN, AND THE PROPERTY STAFF AT YORK. AS REGARDS THE SAID PROPERTY STAFF AT YORK, WE FURTHER FIND A LACK OF COMMUNITY OF INTEREST BETWEEN THE CLEANERS ON THE ONE HAND, (EITHER SEPARATELY OR COLLECTIVELY) WITH THE RESIDENT SUPERINTENDENTS, SECURITY GUARDS AND LIFE GUARDS. INDEED, AS REGARDS THE RESIDENT SUPERINTENDENTS, THERE IS SOME EVIDENCE BEFORE US TO THE EFFECT THAT SOME OF THESE INDIVIDUALS EXERCISE MANAGERIAL FUNCTIONS PURSUANT TO THE PROVISIONS OF SECTION 1(3)(B) OF THE ACT.

13. IN THE RESULT, THEREFORE, THE BOARD IS OF THE OPINION THAT A BARGAINING UNIT COMPOSED OF CLEANERS EXCLUSIVELY AT YORK WOULD CONSTITUTE A VIABLE ENTITY IN TERMS OF THE NORMAL OPERATIONS OF THE EMPLOYER AND THE LEGITIMATE ASPIRATIONS OF ITS EMPLOYEES. WE THEREFORE FIND THAT THESE EMPLOYEES INCLUDED IN THE BARGAINING UNIT DO POSSESS A BASIC AND DISTINCTIVE COMMUNITY OF INTEREST IN TERMS OF THE BARGAINING RELATIONSHIP WHICH WILL RESULT FROM CERTIFICATION.

14. HAVING REGARD TO THE FOREGOING, THE BOARD THEREFORE FINDS THAT ALL CLEANERS EMPLOYED BY THE RESPONDENT AT YORK CONDOMINIUM CORPORATION NO. 42, 330 DIXON ROAD, IN METROPOLITAN TORONTO, SAVE AND EXCEPT RESIDENT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF RESIDENT SUPERINTENDENT AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

15. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION

WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 6, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

16. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. ADE: JUNE 16, 1972.

I DISSENT FOR REASONS TO BE GIVEN LATER IN WRITING.

1763-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) v. BUSH GAMBLE COMPANY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: H. BUCHANAN AND A. PATTERSON FOR THE APPLICANT; R. C. FILION, J. L. BRIGGS AND G. F. BRIGGS FOR THE RESPONDENT; R. DIPROSE FOR THE OBJECTORS.

DECISION OF THE BOARD: JUNE 21, 1972.

1. BY A DECISION DATED APRIL 17, 1972 THE BOARD DIRECTED THE TAKING OF A REPRESENTATION VOTE IN THE UNIT OF EMPLOYEES FOUND TO BE APPROPRIATE IN PARAGRAPH 2 OF THAT DECISION, NAMELY ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

2. IN THE COURSE OF MAKING ARRANGEMENTS FOR THE CONDUCT OF THE VOTE, THE APPLICANT CHALLENGED THE ENTITLEMENT OF A. BEAUDRY AND L. LAISHLEY TO BE INCLUDED ON THE VOTERS' LIST ON THE GROUNDS THAT THEY FALL WITHIN THE EXCLUSION OF OFFICE STAFF. THE RESPONDENT ON THE OTHER HAND SUBMITTED THAT THEIR COMMUNITY OF INTEREST LAY WITH THE WAREHOUSE EMPLOYEES AND WERE IN THE BARGAINING UNIT AND THEREFORE SHOULD BE INCLUDED ON THE VOTERS' LIST. THE RESPONDENT ALSO CHALLENGED THE ENTITLEMENT OF R. McALLISTER AND R. DES BIENS TO BE INCLUDED ON THE VOTERS' LIST ON THE GROUNDS THAT THEY FALL WITHIN THE EXCLUSION OF STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD. THE POSITION OF THE APPLICANT WAS THAT THE TWO SAID PERSONS WERE FULL-TIME EMPLOYEES FALLING WITHIN THE BARGAINING UNIT.

3. HAVING REGARD TO THE FOREGOING CHALLENGES, THE BOARD APPOINTED MR. D. K. AYNLEY, EXAMINER, TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF A. BEAUDRY AND L. LAISHLEY AND ON THE

EMPLOYMENT STATUS OF R. McALLISTER AND R. DES BIENS. THE SAID FOUR PERSONS, HOWEVER, WERE ALLOWED TO AND DID IN FACT CAST SEGREGATED BALLOTS IN THE REPRESENTATION VOTE WHICH WAS TAKEN ON MAY 18, 1972. TWO OTHER PERSONS, NAMELY L. BAZSO AND K. FAHEY, ALSO WERE PERMITTED TO CAST SEGREGATED BALLOTS. THE RESPONDENT CHALLENGED THEIR ENTITLEMENT TO CAST BALLOTS ON THE GROUNDS THAT THEIR EMPLOYMENT WAS TERMINATED BETWEEN THE DATE THE BOARD DIRECTED THE TAKING OF THE REPRESENTATION VOTE ON APRIL 17, 1972 AND THE DATE THE VOTE WAS TAKEN ON MAY 18, 1972. BECAUSE OF THE FOREGOING CHALLENGES, FOLLOWING THE TAKING OF THE VOTE THE BALLOT BOX WAS SEALED IN ACCORDANCE WITH A DIRECTION CONTAINED IN THE DECISION OF THE BOARD DATED MAY 8, 1972.

4. A FURTHER HEARING OF THE APPLICATION WAS HELD ON JUNE 8, 1972, AT WHICH TIME THE BOARD ENTERTAINED THE SUBMISSIONS OF THE PARTIES ON THE REPORT OF THE EXAMINER DATED MAY 30, 1972, AND WITH RESPECT TO THE ELIGIBILITY OF L. BAZSO AND K. FAHEY TO CAST BALLOTS IN THE REPRESENTATION VOTE. AT THE SAID HEARING THE BOARD ALSO ALLOWED THE PARTIES TO ADDUCE EVIDENCE AND MAKE REPRESENTATIONS RELATING TO CHARGES MADE BY THE RESPONDENT THAT THE APPLICANT HAD VIOLATED THE DIRECTION OF THE REGISTRAR CONTAINED IN HIS LETTER OF MAY 9, 1972, THAT ALL INTERESTED PERSONS REFRAIN AND DESIST FROM PROPAGANDA AND ELECTIONEERING FROM MIDNIGHT OF SUNDAY, MAY 14, 1972 UNTIL THE VOTE WAS TAKEN. AS WELL, THE BOARD ENTERTAINED CHARGES OF INTIMIDATION AND COERCION ON THE PART OF THE RESPONDENT WHICH ARE CONTAINED IN A LETTER FROM THE APPLICANT DATED MAY 23, 1972.

5. THE BOARD IS SATISFIED THAT L. BAZSO AND K. FAHEY TERMINATED THEIR EMPLOYMENT WITH THE RESPONDENT ON MAY 12, 1972 AND MAY 8, 1972, RESPECTIVELY, AND THAT ACCORDINGLY THEY WERE NOT ENTITLED TO CAST A BALLOT IN THE REPRESENTATION VOTE TAKEN ON MAY 18, 1972.

6. BASED ON THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, THE BOARD FINDS THAT R. McALLISTER AND RICHARD DES BIENS ARE REGULAR FULL-TIME EMPLOYEES IN THE BARGAINING UNIT AND WERE ENTITLED TO CAST A BALLOT IN THE REPRESENTATION VOTE TAKEN ON MAY 18, 1972.

7. THE PARTIES AGREED THAT THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER RELATING TO THE DUTIES AND RESPONSIBILITIES OF L. LAISHLEY WAS APPLICABLE TO L. BEAUDRY, BOTH OF WHOM ARE CLASSIFIED BY THE RESPONDENT AS ORDER CLERKS. THE PRIME FUNCTION OF THE TWO ORDER CLERKS IS TO TAKE ORDERS AS THEY ARE TELEPHONED IN BY CUSTOMERS. THESE ORDERS ARE THEN PRICED AND SENT TO THE WAREHOUSE TO BE FILLED. THE SALESMEN ALSO BRING THEIR ORDER BOOKS TO THE CLERKS FOR PRICING AND TRANSMISSION TO THE WAREHOUSE. THE ORDER CLERKS OCCASIONALLY CALL A FEW CUSTOMERS TO GET ORDERS AND THEY COULD INFORM SUCH CUSTOMERS OF ANY "SPECIALS" THAT MIGHT BE ON IN THAT WEEK. ANY REQUESTS BY CUSTOMERS FOR "DISCOUNTS", HOWEVER, WOULD BE REFERRED TO THE GENERAL

MANAGER. THE ORDER CLERKS TAKE THEIR DIRECTIONS FROM THE GENERAL MANAGER OR THE SALES MANAGER. THEY HAVE CONSIDERABLE CONTACT WITH THE SALES MANAGER ON A DAY-TO-DAY BASIS. HE ACCEPTS THE ORDERS THEY HAVE OBTAINED AND KEEPS THEM UP TO DATE ON PRICE CHANGES AND ARTICLES IN STOCK. THE WAREHOUSE MANAGER KEEPS THEM INFORMED ABOUT STOCK RECEIVED IN THE WAREHOUSE BUT HE DOES NOT GIVE THEM ANY INSTRUCTIONS. THE ORDER CLERKS MAY GO INTO THE WAREHOUSE HALF A DOZEN TIMES A DAY TO CHECK ON STOCK FOR ORDERS WHICH HAVE BEEN TELEPHONED IN BY CUSTOMERS. THEY NEITHER ASSIST THE WAREHOUSE EMPLOYEES NOR OFFICE STAFF. THEY DO, HOWEVER, OCCUPY A SEPARATE OFFICE ADJACENT TO THE GENERAL OFFICE AREA. THE SECRETARY-TREASURER WHO SUPERVISES THE OFFICE EMPLOYEES DOES NOT SUPERVISE THE ORDER CLERKS BUT SHE MAY BRING THEM ORDERS WHICH HAVE BEEN TELEPHONED DIRECTLY TO HER.

8. BASED ON THE FOREGOING EVIDENCE, WE FIND THAT THE TWO ORDER CLERKS A. BEAUDRY AND L. LAISHLEY HAVE A GREATER COMMUNITY OF INTEREST WITH THE OFFICE STAFF THAN THE WAREHOUSE EMPLOYEES OF THE RESPONDENT. WE ACCORDINGLY FURTHER FIND THAT THEY FALL WITHIN THE EXCLUSION OF OFFICE STAFF AND ARE NOT INCLUDED IN THE BARGAINING UNIT (SEE WRAGGE SHOES LIMITED CASE OLRB M.R. NOVEMBER 1969 P. 961 AND BLAW-KNOX OF CANADA LIMITED CASE OLRB M.R. MAY 1971 P. 299). A BEAUDRY AND L. LAISHLEY THEREFORE WERE NOT ENTITLED TO CAST BALLOTS IN THE REPRESENTATION VOTE TAKEN ON MAY 18, 1972.

9. BASED ON THE EVIDENCE ADDUCED BY THE PARTIES, WE FIND THAT THE APPLICANT DID NOT VIOLATE THE DIRECTION OF THE REGISTRAR CONTAINED IN HIS LETTER OF MAY 9, 1972 WITH RESPECT TO PROPAGANDA AND ELECTIONEERING.

10. WITH RESPECT TO THE ALLEGATIONS OF INTIMIDATION AND COERCION OF THE EMPLOYEES CONCERNED BY THE RESPONDENT WHICH WERE MADE BY THE APPLICANT, THE FOLLOWING IS THE RELEVANT EVIDENCE RELATING TO THOSE CHARGES. ON MAY 11, 1972, SIX DAYS PRIOR TO THE TAKING OF THE REPRESENTATION VOTE, JACKSON L. BRIGGS THE PRESIDENT OF THE RESPONDENT, CALLED A MEETING OF ALL OF THE BARGAINING UNIT EMPLOYEES WHICH TOOK PLACE IN THE WAREHOUSE DURING THE LAST FIFTEEN MINUTES OF THE EMPLOYEES' WORKING DAY. WE FIND ON THE EVIDENCE THAT ESSENTIALLY HE ONLY READ TO THEM A PREPARED THREE-PAGE DOCUMENT WHICH WAS FILED AS AN EXHIBIT. THE TEXT OF THE DOCUMENT IS AS FOLLOWS:

AS YOU KNOW, THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION HAS APPLIED TO THE LABOUR RELATIONS BOARD TO BE APPOINTED AS THE BARGAINING AGENT FOR YOU. NOW PROBABLY WE WOULD ALL AGREE THAT UNIONS SERVE A USEFUL PURPOSE IN LARGE COMPANIES WHERE THERE IS LITTLE OR NO PERSONAL CONTACT WITH MANAGEMENT. BUT ON REFLECTION, I

HOPE THAT YOU WOULD AGREE WITH ME THAT IN OUR COMPANY NO USEFUL PURPOSE WOULD BE SERVED BY HAVING A UNION AS YOUR SPOKESMAN.

THIS IS A SMALL COMPANY WITH A TOTAL WORK FORCE OF ONLY 30 EMPLOYEES. MANY OF YOU HAVE BEEN WITH THE COMPANY FOR A GREAT NUMBER OF YEARS -- SOME OVER 30 -- AND I FEEL THAT I KNOW EACH OF YOU WELL. IN MANY CASES THE COMPANY HAS BEEN ABLE TO PROVIDE YOU WITH THOSE LITTLE AMENITIES WHICH ARE ONLY POSSIBLE BECAUSE WE KNOW EACH OTHER SO WELL. I HAVE ALWAYS HOPED THAT YOU WOULD FEEL FREE TO DISCUSS YOUR PROBLEMS DIRECTLY WITH US SO THAT WE MIGHT BE ABLE TO HAVE A "HAPPY SHIP". FRANKLY, I AM DISTURBED AT THE PROSPECT OF HAVING TO DISCUSS ANY SUCH MATTERS WITH OUTSIDERS AND OF NOT BEING ABLE TO DISCUSS THEM WITH YOU DIRECTLY.

I HAVE ALWAYS FELT STRONGLY THAT FOR THIS TO BE A PLEASANT PLACE TO WORK WE MUST ALL DO OUR SHARE. ANYONE WHO DOESN'T CARRY HIS SHARE OF THE LOAD SIMPLY IMPOSES A GREATER BURDEN ON SOMEONE ELSE AND THIS OF COURSE IS NOT FAIR. YOU HAVE DOUBTLESS REALIZED THAT FROM TIME TO TIME WE HAVE HAD TO LET PEOPLE GO WHO WERE NOT DOING THEIR PART -- THIS IS NOT A PLEASANT TASK, BUT IT MUST BE DONE OR OTHERWISE SOME OF YOU WILL FIND THAT YOU ARE HAVING TO DO MORE THAN YOUR SHARE. UNFORTUNATELY, THIS FREEDOM ON THE PART OF MANAGEMENT IS SOMETIMES RESTRICTED BY UNIONS WHOSE CONCERN MAY BE MORE WITH THE MAINTENANCE OF ITS MEMBERSHIP THAN WITH THE QUALITY OF THE WORK BEING DONE BY SOME OF THESE MEMBERS. I HOPE THAT ALL OF YOU AND PARTICULARLY THOSE OF YOU HAVE BEEN WITH THE COMPANY FOR SOME YEARS FEEL THAT THIS IS A PLEASANT PLACE TO WORK, AND I AM AFRAID THAT THE INVOLVEMENT OF UNION OFFICIALS MAY SERIOUSLY AFFECT THIS ATMOSPHERE. I AM CONCERNED TOO WITH THE THOUGHT THAT THE IMPOSITION OF SENIORITY RULES, SO OFTEN DEMANDED BY UNIONS, MAY RESTRICT THE ABILITY OF THE COMPANY TO ADVANCE THOSE WHO BY THEIR EFFORT HAVE DESERVED SUCH RECOGNITION.

BECAUSE THIS IS A SMALL COMPANY WE HAVE FACED GREAT DIFFICULTIES IN THE PAST FEW YEARS, CAUGHT AS WE ARE IN THE MIDDLE OF A WAR BETWEEN OUR LARGE COMPETITORS. OUR ABILITY TO CONTINUE IS DEPENDENT UPON THE FRIENDLY, PERSONAL AND EFFICIENT SERVICE

WHICH WE HAVE BEEN ABLE TO GIVE IN COMPARISON WITH THAT PROVIDED BY THE LARGER COMPANIES. HOWEVER, IT HAS BEEN DIFFICULT FOR THE COMPANY TO MAKE ITS WAY, AND IF WE ARE TO CONTINUE, WE MUST RETAIN THE TEAMWORK WHICH WE HAVE BEEN ABLE TO DEMONSTRATE. TO IMPOSE RIGID RESTRICTIONS ON JOB FUNCTIONS AND TO REQUIRE THE COMPULSORY CHECK OFF OF UNION DUES AND THE OTHER ARRANGEMENTS COMMON TO UNION AGREEMENTS WOULD SERIOUSLY AFFECT THE ATTITUDE OF MANY OF YOU AND THUS THE ABILITY OF THE COMPANY TO SURVIVE AND ITS OPPORTUNITY TO PROVIDE YOU WITH JOBS.

NO DOUBT ALL OF US WOULD LIKE TO MAKE MORE MONEY THAN WE DO -- THAT IS A VARY HUMAN REACTION. I HOPE YOU FEEL THAT THE COMPANY HAS BEEN FAIR WITH YOU; CERTAINLY WE FEEL THAT WE HAVE BEEN PAYING AS MUCH AS WE POSSIBLY COULD IN THE PAST, AND WE HOPE THAT WE WILL BE ABLE TO MAKE FURTHER ADJUSTMENTS AS CONDITIONS PERMIT. SINCE THE APPLICATION OF THE UNION FOR CERTIFICATION BACK IN MARCH, IT HAS BEEN ILLEGAL FOR THE COMPANY TO MAKE ANY ADJUSTMENTS IN WAGES OR WORKING CONDITIONS AND IF THE UNION IS CERTIFIED AND GIVES NOTICE OF ITS DESIRE TO BARGAIN, NO CHANGES IN WAGES OR WORKING CONDITIONS COULD THEREAFTER BE MADE WITHOUT THE UNION'S CONSENT.

THE LABOUR RELATIONS BOARD HAS ORDERED THAT A VOTE BY SECRET BALLOT BE CONDUCTED HERE ON THURSDAY, MAY 18TH. YOU WILL THUS HAVE AN OPPORTUNITY TO EXPRESS YOUR WISHES FREELY WITHOUT ANY PERSUASION FROM ANYONE AND NEITHER THE COMPANY NOR THE UNION WILL KNOW HOW YOU HAVE VOTED. THIS IS AS IT SHOULD BE. THE DECISION YOU MAKE IS AN IMPORTANT ONE FOR YOUR FUTURE. I HOPE THAT YOU WILL CONSIDER ALL OF THE ASPECTS OF THE MATTER BEFORE YOU VOTE.

11. THE PORTION OF BRIGG'S SPEECH WHICH CAUSES US CONCERN AS TO ITS EFFECT ON THE EMPLOYEES IS THE LAST SENTENCE OF PARAGRAPH 4 IN WHICH HE MADE REFERENCE TO THE ABILITY OF THE RESPONDENT TO SURVIVE AND ITS OPPORTUNITY TO PROVIDE THE EMPLOYEES WITH JOBS. IN OUR VIEW, THAT SENTENCE IS OPEN TO THE INTERPRETATION THAT THE SUCCESS OF THE APPLICANT IN ITS ORGANIZING CAMPAIGN COULD JEOPARDIZE THE JOBS OF THE EMPLOYEES AND BASED ON THE EVIDENCE CALLED BY THE APPLICANT, AT LEAST SOME OF THE EMPLOYEES PLACED SUCH AN INTERPRETATION ON THIS STATEMENT. IN ALL THE CIRCUMSTANCES, THE BOARD IS OF THE OPINION THAT IT IS ADVISABLE TO HOLD ANOTHER REPRESENTATION VOTE IN ORDER TO DETERMINE THE WISHES OF THE EMPLOYEES. THE BOARD ACCORDINGLY DIRECTS THAT A FURTHER REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY

TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

12. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

13. THE BOARD FURTHER DIRECTS THAT THE BALLOTS CAST IN THE REPRESENTATION VOTE HELD ON MAY 18, 1972 NOT BE COUNTED AND THAT THE BALLOTS BE DESTROYED.

14. THE MATTER IS REFERRED TO THE REGISTRAR.

2168-72-JD: RANEY BRADY (COMPLAINANT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA - LOCAL UNION 38 - AND UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA - ONTARIO PROVINCIAL COUNCIL - AND - LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA - LOCAL 837 - AND - LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA - ONTARIO PROVINCIAL COUNCIL - AND - J. DONALD O'SHEA - MISSISSAUGA, ONTARIO (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: JUNE 22, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 81 OF THE LABOUR RELATIONS ACT WITH RESPECT TO A WORK ASSIGNMENT DISPUTE. THE COMPLAINANT REQUESTS AN INTERIM ORDER AND IN SUPPORT THEREOF STATES AS FOLLOWS:

10. (WHERE THE COMPLAINANT REQUESTS THAT AN INTERIM ORDER WITH RESPECT TO THE WORK ASSIGNMENT BE ISSUED BY THE BOARD.) DETAILS OF THE ALLEGATION THAT A STRIKE IS IMMINENT OR IS TAKING PLACE BY REASON OF THE REQUIREMENT AS TO THE ASSIGNMENT OF WORK OR BY REASON OF THE ASSIGNMENT OF WORK:

THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 38 AND AFFILIATED OF THE ONTARIO PROVINCIAL COUNCIL MAY FEEL ILLEGAL STRIKE ACTION IS NECESSARY TO ESTABLISH AN UNFAIR RIGHT TO PERFORM WORK PROPERLY ASSIGNED TO OTHERS.

2. UNDER SUBSECTION (8) OF SECTION 81, WHERE A COMPLAINANT ALLEGES THAT A STRIKE IS IMMINENT OR IS TAKING PLACE, THE BOARD

MAY, AFTER CONSULTING WITH THE PARTIES, MAKE AN INTERIM ORDER. IN OUR OPINION, THE COMPLAINT DOES NOT MAY ANY SUCH ALLEGATION. FURTHERMORE, IT WOULD APPEAR FROM THE COMPLAINT THAT THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 38 AND THE COMPLAINANT ARE INVOLVED IN AN ARBITRATION ARISING OUT OF THE ASSIGNMENT OF THE WORK IN DISPUTE.

3. IN THESE CIRCUMSTANCES, WE ARE OF THE OPINION THAT THE COMPLAINT DOES NOT MAKE OUT A PRIMA FACIE CASE FOR THE ISSUANCE OF AN INTERIM ORDER AND, PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THE REQUEST FOR AN INTERIM ORDER IS DISMISSED.

4. THE REGISTRAR IS DIRECTED TO PROCESS THE COMPLAINT IN ACCORDANCE WITH THIS DECISION.

854-71-M: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LIVINGSTON TRANSPORTATION LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F.W. MURRAY.

DECISION OF THE BOARD: JUNE 26, 1972.

1. THE RESPONDENT IN THIS MATTER HAS REQUESTED THAT THE BOARD RECONSIDER ITS DECISION DATED MAY 19, 1972. THE MATTERS RAISED BY THE RESPONDENT WERE CONSIDERED BY THE MAJORITY OF THE BOARD IN ITS EARLIER DECISION AND THE BOARD IS ACCORDINGLY NOT PREPARED TO DEPART FROM ITS EARLIER DECISION.

2. HOWEVER, SOME OF THE RESPONDENT'S COMMENTS BEAR COMMENT. FIRST, AS TO THE QUESTION OF MANAGERIAL STATUS WITH RESPECT TO MR. BURWELL THE MAJORITY FELT THAT THE EVIDENCE IN THAT RESPECT WAS EXTREMELY MEAGRE. WHILE THE RESPONDENT DID IN ARGUMENT REFER TO MR. BURWELL'S MANAGERIAL STATUS THE THRUST OF THE RESPONDENT'S SUBMISSIONS CONCERNING THE EXAMINER'S REPORT WAS WITH RESPECT TO THE ISSUE OF WHETHER THE PERSONS WERE EMPLOYEES OR INDEPENDENT CONTRACTORS. THE RESPONDENT'S LETTER OF JANUARY 11, 1972, STATED:

"THE ISSUE BEFORE THE BOARD IS WHETHER OR NOT THE PERSONS EXAMINED ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE LABOUR RELATIONS ACT. IN THIS RESPECT, IT IS THE RESPONDENT'S POSITION THAT SUCH PERSON ARE NOT ITS EMPLOYEES AND ARE INDEPENDENT CONTRACTORS..."

3. THE MAJORITY OF THE BOARD FELT THAT THE ISSUE IN THIS CASE WAS AS STATED BY THE RESPONDENT IN THE FIRST INSTANCE WHETHER THE PERSONS INVOLVED WERE EMPLOYEES OR INDEPENDENT CONTRACTORS AND THAT SUCH EVIDENCE THAT TENDED TO A SUGGESTION OF MANAGERIAL FUNCTIONS DID NOT REQUIRE ELABORATE COMMENT. THE MAJORITY CONSIDERED THAT THE RELATIONSHIP BETWEEN MR. BURWELL AND MR. CORKUM WAS OF A SUBSTITUTIONAL NATURE AND DID NOT CONFER UPON MR. BURWELL MANAGERIAL STATUS. THAT SUBSTITUTION IS REFERRED TO, IN PASSING, IN PARAGRAPH 11 OF THE BOARD'S DECISION DATED MAY 19, 1972.

4. FURTHER, THE BOARD IS NOT PREPARED TO DEPART FROM ITS PRACTICE OF CONSIDERING MATTERS AT THE DATE OF THE MAKING OF THE APPLICATION AND TO CONDUCT FURTHER EXAMINATIONS NOTWITHSTANDING CONDITIONS MAY HAVE CHANGED. TO RETURN AND CONTINUE EXAMINING THE SITUATION WOULD PERPETUATE AN APPLICATION AD INFINITUM. THE REQUEST FOR RECONSIDERATION AND TO CONDUCT FURTHER HEARINGS IS THEREFORE DENIED.

DECISION OF BOARD MEMBER F.W. MURRAY: JUNE 26, 1972.

1. WHILE I DISSENTED FROM THE MAJORITY DECISION OF THE BOARD DATED MAY 19, 1972, I CONCUR WITH THE BOARD ALTHOUGH NOT NECESSARILY FOR THE SAME REASONS. THIS IS NOT A CASE FOR RECONSIDERATION AND I FURTHER CONCUR WITH THE DECISION OF THE MAJORITY NOT DEPARTING FROM THE BOARD'S PRACTICE TO CONSIDER MATTERS AT THE DATE OF THE MAKING OF THE APPLICATION.

1806-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF GOVERNORS RYERSON POLYTECHNICAL INSTITUTE (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND J. E. C. ROBINSON, Q.C.

DECISION OF VICE-CHAIRMAN RORY F. EGAN: JUNE 27, 1972.

1. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED MAY 29, 1972, THE BOARD FINDS THAT MRS. A. MACNAIR, SECRETARY TO THE CHIEF LIBRARIAN, IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS THEREFORE INCLUDED IN THE BARGAINING UNIT. THE BOARD FURTHER FINDS THAT MRS. H. S. LEE, ALTHOUGH REFERRED TO AS A SUPERVISOR, DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS THEREFORE INCLUDED IN THE BARGAINING UNIT. THE BOARD FURTHER FINDS THAT MISS C. N. ISHMAEL, REFERRED TO AS A SUPERVISOR, EXERCISES MANAGERIAL FUNCTIONS WITHIN

THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS THEREFORE EXCLUDED FROM THE BARGAINING UNIT.

2. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE ASSISTANT CHIEF LIBRARIAN IS EXCLUDED FROM THE BARGAINING UNIT.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

4. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS LIBRARIES IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 14, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER D. B. ARCHER: JUNE 27, 1972.

I DISSENT. I WOULD HAVE FOUND ON THE EVIDENCE THAT MRS. C. N. ISHMAIL OUGHT TO BE INCLUDED IN THE BARGAINING UNIT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C. JUNE 27, 1972.

I DISSENT FROM THAT PART OF THE DECISION WHICH CONCERNS MRS. A. MACNAIR AND WOULD FIND THAT SHE IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND SHOULD BE EXCLUDED FROM THE BARGAINING UNIT.

(INADVERTENTLY DELETED FROM THE MAY 1972 MONTHLY REPORT).

1858-72-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS - AFL, CIO, CLC (APPLICANT) V. EPE-PIONEER ELECTRIC LIMITED (RESPONDENT) V. DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A. F. OF L. - C. I. O., C. L. C. (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.J.F. ADE.

APPEARANCES AT THE HEARING: NO ONE APPEARING FOR THE APPLICANT; D.R. BYERS AND B.J. FERREIRA FOR THE RESPONDENT; L.H. ROSEN FOR THE INTERVENER; LOUIS WINER FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD:

MAY 4, 1972.

1. IN THIS MATTER THE INTERVENER FILED AN INTERVENER'S APPLICATION FOR CERTIFICATION ON APRIL 26, 1972, WHICH WAS THE TERMINAL DATE. THE ORIGINAL APPLICATION FOR CERTIFICATION AND THE INTERVENER'S APPLICATION FOR CERTIFICATION WERE LISTED FOR HEARING ON MAY 2, 1972, IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE. PRIOR TO THIS MATTER COMING ON FOR HEARING A STATEMENT OF DESIRE WAS FILED BY A GROUP OF EMPLOYEES WITH RESPECT TO THE APPLICANT'S APPLICATION FOR CERTIFICATION. ON APRIL 28, 1972, THE APPLICANT REQUESTED THAT ITS APPLICATION FOR CERTIFICATION BE WITHDRAWN.

2. IF THE BOARD WERE TO GRANT LEAVE TO THE APPLICANT TO WITHDRAW THE APPLICATION FOR CERTIFICATION IN THESE CIRCUMSTANCES THEN THE ONLY OUTSTANDING MATTER REMAINING WOULD BE THE INTERVENER'S APPLICATION FOR CERTIFICATION. HOWEVER, THE BOARD IN ACCORDANCE WITH ITS USUAL PRACTICE DID NOT POST NOTICE OF THE INTERVENER'S APPLICATION FOR CERTIFICATION SO THAT THE EMPLOYEES DID NOT HAVE NOTICE OF THE INTERVENER'S APPLICATION. AT THE HEARING SUBMISSIONS WERE MADE BY THE RESPONDENT EMPLOYER AND BY THE PERSONS WHO HAD FILED THE STATEMENT OF DESIRE REQUESTING THAT THE EMPLOYEES RECEIVE NOTICE OF THE INTERVENER'S APPLICATION AND FURTHER REQUESTING A NEW TERMINAL DATE TO BE SET.

3. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES THE REGISTRAR IS DIRECTED TO GIVE NOTICE TO THE EMPLOYEES OF THE INTERVENER'S APPLICATION FOR CERTIFICATION AND TO FIX A NEW TERMINAL DATE IN THIS MATTER.

4. THE REQUEST BY THE APPLICANT FOR LEAVE TO WITHDRAW ITS APPLICATION IS RESERVED PENDING A FINAL DISPOSITION IN THESE MATTERS.

1939-72-R: INTERNATIONAL UNION OF DOLL, & TOY WORKERS OF THE U.S.A. & CANADA, LOCAL 905 (APPLICANT) V. STANDARD BRANDS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: J. B. WATERMAN, K. COUTLEE AND V. KNAPP FOR THE APPLICANT; J. P. BORDEN, GEORGE TISCHLER AND D. WOZNIAK FOR THE RESPONDENT; F. F. KIVELITIS, SHEILA BINNINGTON AND G. RICHARDSON FOR THE OBJECTORS.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER
J. D. BELL: JUNE 27, 1972.

. . .

6. THE APPLICANT FILED CHARGES ALLEGING THAT THE RESPONDENT SOUGHT BY INTIMIDATION AND COERCION TO COMPEL ITS EMPLOYEES TO REFRAIN FROM BECOMING OR TO CEASE TO BE MEMBERS OF THE APPLICANT TRADE UNION. THE BOARD ENTERTAINED THE EVIDENCE CALLED BY THE PARTIES RELATING TO THE APPLICANT'S CHARGES.

7. DEALING FIRST WITH THE EVIDENCE ADDUCED WITH RESPECT TO THE PETITIONS, ONE OF THE PETITIONS BEARING THE SIGNATURES OF SEVEN EMPLOYEES WAS CIRCULATED BY FRED KIVELITIS, A LEAD HAND EMPLOYED IN THE RESPONDENT'S WAREHOUSE. ACCORDING TO THE EVIDENCE, WHILE HE SHARES AN OFFICE IN THE WAREHOUSE WITH TWO PERSONS WHO ARE MEMBERS OF MANAGEMENT, SINCE THE RESPONDENT PURCHASED THE BUSINESS AT 1075 ELLESMERE ROAD FROM ANOTHER COMPANY IN 1968, KIVELITIS HAS PERFORMED LARGELY CLERICAL FUNCTIONS IN CONNECTION WITH THE OPERATIONS OF THE WAREHOUSE AND EXERCISES NO AUTHORITY OVER OTHER WAREHOUSE EMPLOYEES. BASED ON THE EVIDENCE, WE ARE SATISFIED THAT THE PETITION WHICH KIVELITIS PREPARED AND CIRCULATED REPRESENTS A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE SEVEN EMPLOYEES WHO AFFIXED THEIR SIGNATURES TO THE PETITION. THERE WAS ALSO FILED WITH THE BOARD A PETITION WHICH WAS PREPARED AND CIRCULATED BY SHEILA BINNINGTON WHO IS A LEAD HAND IN THE PLANT, WHICH BEARS HER SIGNATURE AND THAT OF ONE OTHER EMPLOYEE. ALTHOUGH ACCORDING TO THE EVIDENCE SHE DOES HAVE CERTAIN SUPERVISORY RESPONSIBILITIES OVER THE FEMALE EMPLOYEES IN THE PLANT, SHE SPENDS THE VAST MAJORITY OF HER TIME PERFORMING BARGAINING UNIT WORK. THE APPLICANT CONCEDED THAT SHE WAS NOT A MEMBER OF MANAGEMENT AND WE ARE SATISFIED THAT THE NATURE OF HER RESPONSIBILITIES RELATING TO OTHER EMPLOYEES IS NOT SUCH AS WOULD INHIBIT ANY OF THE OTHER EMPLOYEES FROM EXPRESSING THEIR TRUE WISHES. BASED ON THE EVIDENCE, WE FIND THAT THE PETITION PREPARED AND CIRCULATED BY MRS. BINNINGTON REPRESENTS A VOLUNTARY EXPRESSION OF BOTH HER TRUE WISHES AND THAT OF THE OTHER EMPLOYEE WHO SIGNED IT. THERE WERE A NUMBER OF MINOR DISCREPANCIES IN THE EVIDENCE GIVEN BY GEORGE RICHARDSON AND JOHN IOANNOU, WITH RESPECT TO THE INDIVIDUAL PETITIONS WHICH THEY FILED ON THEIR OWN BEHALF. HAVING REGARD TO ALL OF THEIR EVIDENCE, HOWEVER, WE ARE SATISFIED THAT THEIR PETITIONS REFLECT A VOLUNTARY EXPRESSION OF THEIR TRUE WISHES.

8. THE EVIDENCE ADDUCED WITH RESPECT TO THE CHARGES FILED BY THE APPLICANT RELATE TO A LETTER DATED MAY 2, 1972 SIGNED BY GEORGE TISCHLER, THE PLANT MANAGER OF THE RESPONDENT, WHICH HE SENT TO EACH EMPLOYEE ON THAT DATE. ONE PARAGRAPH OF THE LETTER READS AS FOLLOWS:

THIS UNION BUSINESS IS A MATTER OF CONCERN TO YOUR COMPANY. IT IS, ALSO, HOWEVER, A MATTER OF SERIOUS CONCERN TO YOU AND YOUR FAMILY. MY SINCERE BELIEF IS THAT IF A UNION WERE TO GET INTO THIS PLANT, IT WOULD NOT WORK TO YOUR BENEFIT BUT COULD WORK TO YOUR SERIOUS HARM. IN FACT, YOU MAY BE FORCED TO GO ON STRIKE FOR SOMETHING YOU DO NOT BELIEVE.

9. COUNSEL FOR THE APPLICANT SUBMITS THAT THE ABOVE STATEMENT WAS BOUND TO HAVE THE EFFECT OF SO INTIMIDATING THE EMPLOYEES THAT THE PETITIONS SHOULD NOT BE ACCEPTED BY THE BOARD AS REFLECTING A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES WHO SIGNED THEM. WE DO NOT ACCEPT THE SUBMISSION OF COUNSEL. IN OUR VIEW, THE CONTENTS OF THE LETTER OF MAY 2, 1972 AND IN PARTICULAR THE ABOVE QUOTED PASSAGE TO WHICH COUNSEL DIRECTED OUR ATTENTION DO NOT EXCEED THE FREEDOM OF AN EMPLOYER TO EXPRESS HIS VIEWS AS PROVIDED FOR IN SECTION 56 OF THE ACT.

10. HAVING REGARD TO ALL OF THE EVIDENCE ADDUCED RELATING TO THE PETITIONS AND THE CHARGES OF THE APPLICANT, THE BOARD IS SATISFIED THAT THE PETITIONS REPRESENT A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES WHO SIGNED THEM. THE BOARD ACCORDINGLY FINDS THAT THE PETITIONS CAST SUFFICIENT DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT SO AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNITS #1 AND #2, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 10, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNITS #1 AND #2. ALL EMPLOYEES OF THE RESPONDENT IN BARGAINING UNITS #1 AND #2 ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

13. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

14. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER O. HODGES: JUNE 27, 1972.

1. I DISSENT.

2. THE COMPANY LETTER OF MAY 2 (SEE PARAGRAPH 8 ABOVE) WAS DELIVERED TO EMPLOYEES MAY 3 OR MAY 4. MOST OF THE UNION APPLICATION CARDS WERE DATED APRIL 30, MAY 1 AND MAY 2. OF THE FOUR PETITIONS, ONE IS DATED MAY 7 AND THE REMAINING THREE PETITIONS ARE DATED MAY 8. THE COMPANY LETTER THEREFORE WAS DELIVERED JUST AFTER THE MAJORITY OF THE UNION CARDS WERE SIGNED. IN MY VIEW, THE COMPANY LETTER INSPIRED THE PETITIONS.

3. THE COMPANY LETTER SUGGESTS A "FORCED" STRIKE. THE PLANT MANAGER, WHO AUTHORED THE LETTER, MUST KNOW THAT A STRIKE IS NOT "FORCED", BUT VOTED FOR OR AGAINST BY THE UNION MEMBERS WHO ARE AFFECTED. HE MUST ALSO KNOW THAT ALL ODDS ARE HEAVILY AGAINST A STRIKE, AS PROVEN BY RELIABLE STATISTICS PUBLISHED BY GOVERNMENTS. HOWEVER, LONG SERVICE EMPLOYEES, WHO HOLD POSITIONS IN CLOSE CONTACT WITH THIS MANAGEMENT, CIRCULATED PETITIONS AND SOLICITED SIGNATURES AGAINST THE UNION FROM AMONG EMPLOYEES WHO HAD ALREADY SIGNED UNION CARDS.

4. THE COMPANY LETTER INVITES EMPLOYEES TO "JUST ASK YOUR SUPERVISOR" ABOUT THE "UNION'S LABOUR AGREEMENTS". THIS IS INVOLVING THE SUPERVISORY APPARATUS OF THE COMPANY IN THE FORMATION OF THE UNION TO A DEGREE THAT IS IN MY OPINION A VIOLATION OF S. 61 AND S. 62 OF THE ACT. I VIEW THE COMPANY LETTER AS PATENT INTERFERENCE IN THE FORMATION AND SELECTION OF THE TRADE UNION WITHIN THE PROHIBITION OF S. 56, AND AN EXCESS OF FREEDOM GIVEN THE EMPLOYER TO EXPRESS HIS VIEWS, AS PROVIDED BY S. 56.

5. CONSIDERING THE EVIDENCE OF THE PETITIONER, GEORGE RICHARDSON, I AM IN DOUBT THAT HE IN FACT ORIGINATED HIS PETITION OF JUNE 8. HE STATED AND REPEATED THE ASSERTION THAT THE PETITION WAS WRITTEN AT HIS HOME ON "SUNDAY AFTERNOON", JUNE 7. THE PETITION BEARS THE DATE OF JUNE 8, AND THAT DISCREPANCY IS NOT EXPLAINED. I AM THEREFORE IN DOUBT THAT THE BOARD RECEIVED HIS ORIGINAL PETITION TO WHICH HE TESTIFIED.

6. CONSIDERING THE EVIDENCE OF THE PETITIONER, JOHN IOANNOU, AND HIS DIFFICULTY IN TESTIFYING IN ENGLISH, I AM NOT SATISFIED THAT HE COULD HAVE TYPED HIS PETITION HIMSELF, AS HE CLAIMED. I CANNOT THEREFORE ACCEPT HIS EVIDENCE AS TO THE ORIGIN AND PREPARATION OF HIS PETITION.

7. CONSIDERING ALL OF THE EVIDENCE, AND IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, I FIND THE EVIDENCE OF THE PETITIONERS UNACCEPTABLE AS TO ORIGIN, PREPARATION, AND CIRCULATION.

8. THE MEMBERSHIP EVIDENCE OF THE UNION IS SUFFICIENT FOR AUTOMATIC CERTIFICATION. SINCE I FIND THAT THE PETITIONS CAST NO DOUBT UPON THAT EVIDENCE, I FURTHER FIND THE APPLICANT ENTITLED TO OUTRIGHT CERTIFICATION IN BOTH UNIT #1 AND UNIT #2.

18767-70-R: CSAO NATIONAL (INC.) (APPLICANT) v. OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: IAN SCOTT AND TERRENCE O'DELL FOR THE APPLICANT; J. W. HEALY, Q.C., M. G. MITCHNICK AND G. MOOGK FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 27, 1972.

1. BY A DECISION DATED FEBRUARY 19, 1971 IN THE INSTANT APPLICATION (OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION CASE OLRB M.R. FEBRUARY 1971 P. 70) THE BOARD FOUND THAT THE APPLICANT HAD NOT ESTABLISHED ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1) (J) (NOW SECTION 1(1)(N)) OF THE LABOUR RELATIONS ACT AND DISMISSED THE APPLICATION. BY LETTER DATED MARCH 10, 1971, COUNSEL FOR THE APPLICANT REQUESTED THAT THE BOARD RECONSIDER ITS DECISION OF FEBRUARY 19, 1971, PURSUANT TO SECTION 79(1) (NOW SECTION 95(1)) OF THE ACT. FOR REASONS GIVEN IN A DECISION DATED APRIL 6, 1971 (OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION CASE OLRB M.R. APRIL 1971 P. 247) THE BOARD UPHELD ITS FINDING THAT THE APPLICANT WAS NOT A TRADE UNION WITHIN THE MEANING OF THE ACT AND DENIED THE REQUEST OF COUNSEL FOR THE APPLICANT.

2. THE APPLICANT THEREUPON APPLIED TO THE ONTARIO HIGH COURT FOR AN ORDER IN LIEU OF A WRIT OF CERTIORARI QUASHING THE ABOVE DECISIONS OF THE BOARD DATED FEBRUARY 19, 1971 AND APRIL 6, 1971. BY A JUDGMENT OF THE HIGH COURT IN RE CSAO NATIONAL (INC.) AND OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION CASE [1972] 1 O.R. 609, LACOURCIERE, J. FOUND THAT THE ABOVE DETERMINATION WITH RESPECT TO THE STATUS OF THE APPLICANT WAS A MATTER WITHIN THE EXCLUSIVE JURISDICTION OF THE BOARD AND WAS NOT REVIEWABLE ON CERTIORARI AND DISMISSED THE APPLICATION. THE APPLICANT APPEALED THE JUDGMENT OF LACOURCIERE, J. TO THE ONTARIO COURT OF APPEAL. IN A JUDGMENT IN CSAO NATIONAL (INC.) v. OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION AND O.L.R.B. CASE 72 CLLC 14,595, THE COURT OF APPEAL HELD THAT THROUGH AN ERROR OF LAW IN THE INTERPRETATION OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT, APPARENT ON THE FACE OF THE RECORD, THE BOARD ASSUMED A JURISDICTION IT DID NOT HAVE TO CREATE AN UNJUSTIFIED IMPEDIMENT TO THE RIGHT OF THE APPLICANT TO CERTIFICATION SUBJECT TO THE FULFILMENT OF THE EXPRESS CONDITIONS TO CERTIFICATION PROVIDED BY THE STATUTE. IN THE RESULT, JESSUP, J.A. (WITH THE CONCURRENCE OF ARNUP, J.A. AND MCGILLIVRAY, J.A.) ALLOWED THE APPEAL AND SET ASIDE THE DECISION OF LACOURCIERE, J. AND IN ITS PLACE ISSUED AN ORDER QUASHING THE BOARD'S FINDING IN ITS DECISIONS OF FEBRUARY 19, 1971 AND APRIL 6, 1971, THAT THE APPLICANT WAS NOT A TRADE UNION WITHIN THE MEANING OF THE ACT AND REMITTED THE APPLICATION FOR CERTIFICATION OF THE APPLICANT TO THE BOARD.

3. THE DIVISION OF THE BOARD WHICH HEARD THE INSTANT APPLICATION AND UNANIMOUSLY ISSUED THE ABOVE CITED DECISIONS DATED FEBRUARY 19, 1971 AND APRIL 6, 1971 WAS COMPOSED OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND R. W. TEAGLE. SUBSEQUENT TO THE BOARD ISSUING THE FOREGOING DECISIONS, BOARD MEMBER R. W. TEAGLE PASSED AWAY.

4. IN LIGHT OF THE DECISION OF THE COURT OF APPEAL, THE BOARD LISTED THE APPLICATION FOR CONTINUATION OF HEARING ON APRIL 24, 1972. UPON THE AGREEMENT OF COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE RESPONDENT, BOARD MEMBER J. D. BELL WAS SUBSTITUTED FOR MR. TEAGLE AS THE EMPLOYER REPRESENTATIVE ON THE DIVISION OF THE BOARD SEIZED OF THE INSTANT APPLICATION.

5. COUNSEL FOR THE APPLICANT ADVISED THE BOARD AT THE HEARING ON APRIL 24TH THAT HE WAS PREPARED TO PROCEED WITH THE INSTANT APPLICATION ON THE BASIS OF THE EVIDENCE AS SET OUT IN THE BOARD'S DECISION OF FEBRUARY 19, 1971 BUT THAT HE WISHED TO CALL FURTHER EVIDENCE RELATING TO THE MATTERS RAISED BY THE BOARD IN PARAGRAPHS 19 AND 20 OF THE SAID DECISION. COUNSEL FOR THE RESPONDENT ADVISED THE BOARD THAT HE WAS ONLY PREPARED TO PROCEED ON THE BASIS OF THE EVIDENCE AS SET OUT IN THE BOARD'S DECISION OF FEBRUARY 19, 1971, IF COUNSEL FOR THE APPLICANT DID NOT ADDUCE ADDITIONAL EVIDENCE. IN VIEW OF THE RESPECTIVE POSITIONS TAKEN BY COUNSEL, THE BOARD ADVISED THE PARTIES THAT THE APPLICATION WOULD BE HEARD DE NOVO. COUNSEL INDICATED TO THE BOARD THAT THEY WERE PREPARED TO PROCEED ON THIS BASIS. THE APPLICATION WAS RELISTED FOR HEARING ON JUNE 13, 1972.

6. AT THE HEARING ON JUNE 13TH, MARION CLEMENT, THE SECRETARY-TREASURER OF THE APPLICANT, IDENTIFIED THE LETTERS PATENT INCORPORATING THE APPLICANT AS A COMPANY WITHOUT SHARE CAPITAL UNDER THE CANADA CORPORATIONS ACT R.S.C. 1970 c. 32, WHICH ARE DATED OCTOBER 16, 1970. SHE ALSO IDENTIFIED THE MINUTE BOOK OF THE APPLICANT WHICH CONTAINS ALL OF THE MINUTES OF THE MEETINGS OF THE BOARD OF DIRECTORS OF THE APPLICANT HELD BETWEEN OCTOBER 20, 1970 AND NOVEMBER 8, 1970. BOTH THE LETTERS PATENT AND MINUTE BOOK WERE FILED AS EXHIBITS. THE MINUTE BOOK CONTAINS BY-LAW No. 1 WHICH WAS ADOPTED BY THE BOARD OF DIRECTORS AT A MEETING ON OCTOBER 20, 1970, AND ALSO A RESOLUTION ADOPTED BY THE BOARD OF DIRECTORS AT A MEETING ON NOVEMBER 8, 1970 WHICH APPROVED THE ADMITTANCE OF MEDICAL TECHNOLOGISTS AND TECHNICIANS INTO MEMBERSHIP IN THE APPLICANT.

7. A RESOLUTION ADOPTED BY THE BOARD OF DIRECTORS ON APRIL 24, 1972, WHICH WAS IDENTIFIED BY GEORGE GEMMELL, THE PRESIDENT OF THE APPLICANT, WAS ALSO FILED AS AN EXHIBIT. THE SAID RESOLUTION APPROVED THE FORM OF APPLICATION FOR MEMBERSHIP IN THE APPLICANT WHICH WAS SIGNED BY THE EMPLOYEES OF THE RESPONDENT FOR WHOM THE APPLICANT SUB-

MITTED EVIDENCE OF MEMBERSHIP. THE RESOLUTION FURTHER PROVIDED THAT ALL APPLICATIONS FOR MEMBERSHIP IN CSAO NATIONAL (INC.) ON SUCH FORMS, WHENEVER MADE, WERE DEEMED TO BE MADE ON THE APPROVED FORM. GEMMELL TESTIFIED THAT THE SAID FORM OF APPLICATION FOR MEMBERSHIP HAD BEEN DESIGNED AND APPROVED BY THE OFFICER COMMITTEE OF THE APPLICANT WHICH IS COMPOSED OF SIX VICE-PRESIDENTS OF THE APPLICANT PRIOR TO THE SAID FORM BEING USED TO SIGN INTO MEMBERSHIP EMPLOYERS OF THE RESPONDENT.

8. MARION CLEMENT AND TERRENCE O'DELL, AN ORGANIZER IN THE EMPLOY OF THE APPLICANT WHO WAS IN CHARGE OF THE ORGANIZING CAMPAIGN AMONG THE EMPLOYEES OF THE RESPONDENT, BOTH TESTIFIED THAT AT NO TIME WAS THE \$1.50 INITIATION FEE PAID BY THE EMPLOYEES OF THE RESPONDENT WHO SIGNED MEMBERSHIP CARDS IN THE APPLICANT RETURNED TO THEM. MARION CLEMENT'S EVIDENCE IS THAT THOSE EMPLOYEES OF THE RESPONDENT WHO SIGNED AN APPLICATION FOR MEMBERSHIP AND PAID THE INITIATION FEE WERE RECORDED AS PROVISIONAL MEMBERS IN THE RECORDS OF THE APPLICANT. HER TESTIMONY IS THAT IN THE EVENT THAT ANY OF THE SAID MEMBERS TERMINATED THEIR EMPLOYMENT WITH THE RESPONDENT, AND SO ADVISED THE APPLICANT, THEIR NAMES WOULD BE REMOVED FROM THE APPLICANT'S MEMBERSHIP RECORDS. ACCORDING TO THE EVIDENCE OF O'DELL, NONE OF THE EMPLOYEES OF THE RESPONDENT WHO SIGNED APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT HAVE HAD THEIR NAMES REMOVED FROM THE APPLICANT'S MEMBERSHIP RECORDS.

9. HAVING REGARD TO THE EVIDENCE BEFORE THE BOARD AND THE DECISION OF THE COURT OF APPEAL IN CSAO NATIONAL (INC.) V. OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION AND O.L.R.B. CASE (SUPRA) THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) (NOW SECTION 1(1)(N)) OF THE LABOUR RELATIONS ACT, R.S.O. 1960 c. 202 AS AMENDED.

10. COUNSEL FOR THE RESPONDENT SUBMITS THAT BY THE PROVISIONS OF SECTION 154 OF PART II OF THE CANADA CORPORATION ACT THE APPLICANT IS CONFINED TO OBJECTS FALLING WITHIN THE LEGISLATIVE AUTHORITY OF THE PARLIAMENT OF CANADA. COUNSEL ACCORDINGLY ARGUED THAT BY VIRTUE OF THE CHARTER GRANTED TO THE APPLICANT IN ITS LETTERS PATENT GIVEN UNDER THE SEAL OF THE MINISTER OF CONSUMER AND CORPORATE AFFAIRS, THE APPLICANT DOES NOT HAVE THE CAPACITY TO REPRESENT EMPLOYEES OF THE RESPONDENT AS THE OPERATIONS OF THE RESPONDENT FALL UNDER PROVINCIAL JURISDICTION.

11. THE PROVISIONS OF SECTION 154(1) OF THE CANADA CORPORATIONS ACT ARE INCORPORATED INTO THE OPENING RECITAL OF THE LETTERS PATENT GRANTING TO THE APPLICANT A CHARTER FOR THE OBJECTS SET OUT THEREIN. THOSE OBJECTS ARE:

- (A) TO REPRESENT THE MEMBERS OF THE CORPORATION AS EMPLOYEES OF GOVERNMENTS AT ALL LEVELS OR

BOARDS, COMMISSIONS OR OTHER EMANATIONS OF THE CROWN IN THE RIGHT OF CANADA OR ANY PROVINCE OR TERRITORY THEREOF OR THE EMPLOYEES OF ANY EMPLOYER OF ANY TYPE OR NATURE WHICH THE BOARD OF DIRECTORS MAY IN ITS SOLE DISCRETION DETERMINE TO BE APPROPRIATE FOR MEMBERSHIP IN THE CORPORATION AND THE CORPORATION MAY REPRESENT SUCH MEMBERS IN MATTERS GOVERNING THEIR RELATIONSHIPS WITH THEIR EMPLOYERS;

- (B) TO ENTER INTO ANY ARRANGEMENTS WITH ANY AUTHORITIES, GOVERNMENTAL, MUNICIPAL LOCAL OR OTHERWISE, (ON A NATIONAL OR OTHER BASIS) THAT MAY SEEM CONDUCTIVE TO THE CORPORATION'S RIGHTS, PRIVILEGES AND CONCESSIONS WHICH THE CORPORATION MAY THINK DESIRABLE TO OBTAIN AND TO CARRY OUT, EXERCISE AND COMPLY WITH ANY SUCH ARRANGEMENTS, RIGHTS, PRIVILEGES AND CONCESSIONS;
- (C) GENERALLY, TO PROMOTE THE COMMON INTERESTS AND BETTERMENT OF THE MEMBERS OF THE CORPORATION.

THE LETTERS PATENT FURTHER STATE THAT THE OPERATIONS OF THE APPLICANT MAY BE CARRIED ON THROUGHOUT CANADA AND ELSEWHERE.

12. THE BOARD IS SATISFIED THAT THE OBJECTS CONTAINED IN THE APPLICANT'S LETTERS PATENT ARE SUFFICIENTLY BROAD SO AS TO PERMIT THE APPLICANT TO REPRESENT THE EMPLOYEES OF THE RESPONDENT FOR WHOM IT IS SEEKING CERTIFICATION. WHETHER OR NOT THE MINISTER OF CONSUMER AND CORPORATE AFFAIRS EXCEEDED HIS JURISDICTION IN GRANTING A CHARTER TO THE APPLICANT FOR THE OBJECTS CONTAINED IN THE LETTERS PATENT IS NOT A MATTER WHICH THE BOARD, IN ITS OPINION, IS CALLED UPON TO MAKE A DETERMINATION IN THE INSTANT PROCEEDINGS.

13. THE BOARD FURTHER FINDS ON THE EVIDENCE BEFORE IT THAT THE APPLICATIONS FOR MEMBERSHIP SIGNED BY THE EMPLOYEES OF THE RESPONDENT WHICH WERE SUBMITTED BY THE APPLICANT ARE IN THE FORM APPROVED BY THE BOARD OF DIRECTORS AND THEREFORE MEET THE REQUIREMENTS OF SECTION 3 (11) OF BY-LAW No. 1.

14. THE BOARD FURTHER FINDS ON THE EVIDENCE THAT THE EMPLOYEES OF THE RESPONDENT FOR WHOM THE APPLICANT SUBMITTED EVIDENCE OF MEMBERSHIP ARE MEMBERS OF THE APPLICANT WITHIN THE MEANING OF SECTION 1(1)(GA) (NOW SECTION 1(1)(J)) OF THE ACT AND THAT THE SAID EVIDENCE

OF MEMBERSHIP MEETS THE REQUIREMENTS SET OUT IN SECTION 48 OF THE BOARD'S RULES OF PROCEDURE AND REGULATIONS. THE BOARD IS SATISFIED THAT THE EVIDENCE SUBMITTED BY THE APPLICANT IN NO WAY CONSTITUTES "CONDITIONAL" MEMBERSHIP.

15. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT ALL MEDICAL LABORATORY TECHNOLOGISTS EMPLOYED IN THE CLINICAL LABORATORY OF THE HOSPITAL OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT CHARGE TECHNOLOGISTS AND PERSONS ABOVE THE RANK OF CHARGE TECHNOLOGIST, PRACTISING MEMBERS OF THE MEDICAL AND NURSING PROFESSION, MEDICAL LABORATORY TECHNOLOGY STUDENTS, LABORATORY ASSISTANTS, LABORATORY AIDES, MORGUE ATTENDANTS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS TEMPORARILY EMPLOYED DURING THE SCHOOL VACATION PERIODS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

16. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 17, 1970, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) (NOW SECTION 92(2)(J)) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

17. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1940-72-R: ASSOCIATION OF NURSES ST. JOSEPH'S HOSPITAL LONDON (APPLICANT) v. THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON, IN ONTARIO (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: D. F. O. HERSEY AND MRS. D. HEINISCH FOR THE APPLICANT; O. W. DURDIN, Q.C. AND JOSEPH RYAN FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 28, 1972.

1. THE NAME "THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON IN ONTARIO OPERATING ST. JOSEPH'S HOSPITAL AT LONDON, ONTARIO" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON, IN ONTARIO".

2. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT IS REQUIRED TO SATISFY THE BOARD THAT IT IS A TRADE UNION

WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS AS FOLLOWS:

"ALL LAY REGISTERED AND GRADUATE NURSES EMPLOYED IN A NURSING CAPACITY ON A PART-TIME BASIS BY THE EMPLOYER AT ITS ST. JOSEPH'S HOSPITAL AT LONDON, ONTARIO, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THAT RANK."

4. AT THE TIME OF THE APPLICATION THE PERSONS COMPRISING THE BARGAINING UNIT PROPOSED BY THE APPLICANT WERE REPRESENTED BY NURSES' ASSOCIATION ST. JOSEPH'S HOSPITAL AT LONDON. THIS APPLICATION THEREFORE INVOLVES AN ATTEMPT BY THE APPLICANT TO DISPLACE THE PRESENT BARGAINING AGENT.

5. AS EVIDENCE GOING TO THE PROOF OF ITS STATUS AS A TRADE UNION, THE APPLICANT FILED WITH THE BOARD A COPY OF THE MINUTES OF A MEETING HELD ON APRIL 26, 1972 DURING THE COURSE OF WHICH A CONSTITUTION WAS ADOPTED.

6. THE CONSTITUTION PROVIDES THAT THE NAME OF THE ORGANIZATION BE "ASSOCIATION OF NURSES ST. JOSEPH'S HOSPITAL, LONDON". THROUGHOUT THE OTHER PROVISIONS OF THE CONSTITUTION, HOWEVER, REFERENCE IS MADE TO THE ORGANIZATION AS "THE NURSES' ASSOCIATION" AND NOT AS "ASSOCIATION OF NURSES ST. JOSEPH'S HOSPITAL, LONDON".

7. THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN SUPPORT OF ITS APPLICATION CONSISTS OF AN APPLICATION AND COUNTER-SIGNED RECEIPT. THESE DOCUMENTS ARE HEADED

APPLICATION FOR MEMBERSHIP IN THE
ASSOCIATION OF NURSES
ST. JOSEPH'S HOSPITAL, LONDON

BUT CONTAIN THE FOLLOWING PARAGRAPHS:

"I HEREBY APPLY FOR MEMBERSHIP IN THE NURSES' ASSOCIATION. IN DOING SO, I, OF MY OWN FREE WILL AND ACCORD, HEREBY AUTHORIZE THE NURSES' ASSOCIATION OR ITS REPRESENTATIVE OR OFFICERS TO ACT FOR ME AS COLLECTIVE BARGAINING AGENT IN ALL MATTERS PERTAINING TO SALARIES, HOURS OF WORK AND OTHER CONDITIONS OF EMPLOYMENT." (EMPHASIS ADDED)

"I HEREBY CERTIFY THAT THE AMOUNT SHOWN BELOW WAS PAID BY ME AS EVIDENCE OF GOOD

FAITH IN MY APPLICATION FOR MEMBERSHIP IN
THE NURSES' ASSOCIATION." (EMPHASIS ADDED)

8. THERE IS NO DOUBT THAT THE SIMILARITY OF THE NAME OF THE INCUMBENT UNION, NURSES' ASSOCIATION ST. JOSEPH'S HOSPITAL, LONDON, ONTARIO, TO THAT OF THE APPLICANT, ASSOCIATION OF NURSES ST. JOSEPH'S HOSPITAL, LONDON, LEAVES SOMETHING TO BE DESIRED WHEN IT COMES TO DISTINGUISHING THEIR SEPARATE IDENTITIES.

9. THERE IS ALSO NO DOUBT FROM THE MINUTES FILED IN EVIDENCE THAT THE MEETING REFERRED TO THEREIN WAS CALLED FOR THE PURPOSE OF ORGANIZING A NEW BODY AND THAT THE PERSONS ATTENDING THE MEETING DID ADOPT A NAME AND A CONSTITUTION OF A NEW ORGANIZATION. THIS ORGANIZATION, THE APPLICANT HEREIN, THE BOARD FINDS TO BE A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

10. THE PROBLEM OF IDENTIFICATION REFERRED TO ABOVE HAS MORE SIGNIFICANCE WITH RESPECT TO THE WEIGHT TO BE ATTACHED BY THE BOARD TO THE DOCUMENTS FILED AS EVIDENCE OF MEMBERSHIP. IT IS INCUMBENT UPON THE BOARD UNDER SECTION 7(1) OF THE ACT TO ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT WHO WERE MEMBERS OF THE TRADE UNION APPLICANT AT THE APPROPRIATE TIME.

11. IN ASCERTAINING THE NUMBER OF EMPLOYEES WHO ARE MEMBERS OF THE UNION, THE BOARD PLACES VERY GREAT RELIANCE UPON THE DOCUMENTS FILED AS EVIDENCE OF MEMBERSHIP. THE RELEVANT PORTIONS OF THE MEMBERSHIP EVIDENCE, WITH EMPHASIS ADDED, HAS BEEN SET OUT ABOVE. IT SHOULD BE POINTED OUT THAT THE FORM IS PARTLY PRINTED AND PARTLY TYPED AND PARTLY HAND PRINTED. THE WORDS "APPLICATION FOR MEMBERSHIP IN THE" ARE PRINTED AT THE HEAD OF THE DOCUMENT. IMMEDIATELY BELOW THOSE WORDS IS TYPED "ASSOCIATION OF NURSES ST. JOSEPH'S HOSPITAL, LONDON". SO FAR, THE DOCUMENT IS STRAIGHT FORWARD. ROOM FOR DOUBT APPEARS HOWEVER WHEN IT IS OBSERVED THAT THE FORMAL PART OF THE DOCUMENT REFERS TO AN APPLICATION FOR MEMBERSHIP IN THE NURSES' ASSOCIATION. THIS PORTION IS PRINTED COMMENCING AT "I HEREBY APPLY" TO AND INCLUSIVE OF THE WORD "EMPLOYMENT". THE APPLICANT'S SIGNATURE APPEARS IMMEDIATELY BELOW THIS FORMAL STATEMENT. THE PARAGRAPH COMMENCING "I HEREBY CERTIFY" TO "ASSOCIATION" IS ALSO PRINTED.

12. IT WOULD APPEAR TO US THAT ALTHOUGH THE FOUNDING GROUP MAY HAVE BEEN ABLE TO EFFECTIVELY DISTINGUISH BETWEEN THE ASSOCIATION OF NURSES ST. JOSEPH'S HOSPITAL, LONDON AND NURSES' ASSOCIATION ST. JOSEPH'S HOSPITAL, LONDON, ONTARIO, BY REASON OF THE FACT OF THEIR ATTENDANCE AT THE CONSTITUTIONAL MEETING, WE VERY MUCH DOUBT THAT THE SAME CLARITY OF IDENTITY WOULD BE PRESENT IN OTHERS IN THE BARGAINING UNIT. THIS IS PARTICULARLY SO SINCE IT IS EVIDENT UPON

THE FACT OF ALL THE DOCUMENTS BEFORE THE BOARD THAT USE HAS BEEN MADE OF PRE-EXISTING FORMS OBVIOUSLY DESIGNED FOR THE USE OF THE "NURSES' ASSOCIATION" AND NOT FOR THE "ASSOCIATION OF NURSES". THE CONFUSION EVIDENT UPON THE FACT OF THE APPLICATION FOR MEMBERSHIP LEAVES DOUBT IN THE MINDS OF THE BOARD AS INDEED IT MIGHT HAVE IN THE MINDS OF SOME OF THE APPLICANTS AS TO WHETHER THE APPLICANTS KNEW THEY WERE DEALING WITH THE NEW ORGANIZATION OR THE OLD ONE TO WHOSE NAME THE FORMS ARE MORE CLOSELY ALLIED.

13. IN OUR OPINION, THE EVIDENCE OF MEMBERSHIP IS NOT SUCH AS TO ENABLE THE BOARD TO ASCERTAIN HOW MANY OF THE EMPLOYEES IN THE PROPOSED BARGAINING UNIT ARE MEMBERS OF THE APPLICANT AND FOR ALL THAT REASON THE APPLICATION IS DISMISSED.

17801-70-R: CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) V. ETOBICOKE FORMING LIMITED (RESPONDENT) V. COUNCIL OF CONCRETE-FORMING TRADE UNIONS (INTERVENER #1) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #2).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS E. BOYER AND H.F. IRWIN.

APPEARANCES AT THE HEARING: J. RONALD CHARLEBOIS AND JOHN MEIORIN FOR THE APPLICANT; RAYMOND A. WERRY FOR THE RESPONDENT; R. KOSKIE AND T. MICHAEL FOR INTERVENER #1; NO ONE FOR INTERVENER #2.

DECISION OF THE BOARD: JUNE 5, 1972.

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4. IN A LETTER RECEIVED BY THE BOARD FROM INTERVENER #1 ON NOVEMBER 23, 1970, INTERVENER #1 MADE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT WITH RESPECT TO THE ALLEGED BEHAVIOUR OF THE APPLICANT AND THE RESPONDENT IN CONNECTION WITH THE MANNER IN WHICH EMPLOYEES OF THE RESPONDENT SIGNED APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT. INTERVENER #1 ALSO FILED SUBSEQUENT LETTERS WITH THE BOARD IN WHICH IT ALLEGED FURTHER IMPROPER OR IRREGULAR CONDUCT AGAINST THE APPLICANT AND ALSO ALLEGED THAT A CERTAIN PERSON WHOSE ADDRESS WAS UNKNOWN DID NOT PAY THE SUM OF AT LEAST ONE DOLLAR TO THE APPLICANT AT THE TIME WHEN HE SIGNED AN APPLICATION TO BECOME A MEMBER OF THE APPLICANT.

5. THE BOARD LISTED THIS MATTER FOR HEARING IN ORDER TO ENABLE INTERVENER #1 TO SHOW CAUSE WHY THE BOARD SHOULD, FIRSTLY, ENTERTAIN THE ALLEGATIONS CONTAINED IN LETTERS FROM IT TO THE BOARD WHICH WERE RECEIVED BY THE BOARD ON NOVEMBER 23, DECEMBER

2 AND 4, 1970 AND, SECONDLY, GRANT LEAVE TO INTERVENER #1 TO PRESENT EVIDENCE AND ARGUMENT IN CONNECTION WITH ALL ISSUES ARISING OUT OF THE SAID ALLEGATIONS.

6. THE BOARD HAS CAREFULLY CONSIDERED THE EVIDENCE GIVEN BEFORE IT IN CONNECTION WITH THE SHOW CAUSE HEARING AND ALSO THE ARGUMENT OF THE PARTIES IN RESPECT THERETO. THE EVIDENCE BEFORE THE BOARD ESTABLISHES THAT INTERVENER #1 INVESTIGATED THE CIRCUMSTANCES UNDER WHICH EMPLOYEES OF THE RESPONDENT SIGNED APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT. IT WAS CLEARLY THE DESIRE OF INTERVENER #1 TO FILE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT IN CONNECTION WITH THIS APPLICATION AND TO THIS END IT ENDEAVOURED TO INTERVIEW EMPLOYEES OF THE RESPONDENT AFFECTED BY THIS APPLICATION. INTERVENER #1 APPARENTLY HAD LITTLE SUCCESS IN OBTAINING INFORMATION FROM EMPLOYEES OF THE RESPONDENT CONCERNING THE CIRCUMSTANCES UNDER WHICH THEY SIGNED APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT.

7. INTERVENER #1 ATTEMPTED TO ESTABLISH BEFORE THE BOARD THAT THE RELUCTANCE OF THE EMPLOYEES OF THE RESPONDENT TO DISCUSS THE ORGANIZATIONAL CAMPAIGN OF THE APPLICANT WAS DUE TO FEAR. HAVING REGARD TO THE EVIDENCE BEFORE THE BOARD, THE BOARD IS OF THE OPINION THAT INTERVENER #1 FAILED TO ESTABLISH THAT THE RELUCTANCE OF THE EMPLOYEES OF THE RESPONDENT TO SPEAK WITH THE REPRESENTATIVES OF INTERVENER #1 CONCERNING THE CIRCUMSTANCES UNDER WHICH THE APPLICANT CONDUCTED ITS ORGANIZATIONAL CAMPAIGN WAS NOT DUE TO ANY FEAR OF INTIMIDATION OR REPRISAL. THE EVIDENCE BEFORE THE BOARD IS EQUALLY CONSISTENT WITH A FEELING OF HOSTILITY AMONG EMPLOYEES OF THE RESPONDENT TOWARDS INTERVENER #1. IN ALL OF THE CIRCUMSTANCES, THE BOARD FINDS THAT INTERVENER #1 DID NOT EXERCISE DUE DILIGENCE IN INVESTIGATING ANY ALLEGED IMPROPER OR IRREGULAR CONDUCT IN CONNECTION WITH THE ORGANIZATIONAL CAMPAIGN OF THE APPLICANT. HAVING REGARD TO THE TIME AT WHICH THE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT WERE FILED WITH THE BOARD, THE INTERVENER #1 WILL NOT BE PERMITTED TO ADDUCE EVIDENCE IN CONNECTION WITH THESE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT. REFERENCE IS MADE TO SECTION 47 OF THE BOARD'S RULES OF PROCEDURE. CONSIDERING NOW THE OTHER ALLEGATIONS FILED BY INTERVENER #1 AGAINST THE APPLICANT. THESE ALLEGATIONS HAVE BEEN CHARACTERIZED BY INTERVENER #1 AS AMOUNTING TO FRAUD.

8. THE PERSON ALLEGED BY INTERVENER #1 NOT TO HAVE PAID ONE DOLLAR WITH RESPECT TO HIS APPLICATION FOR MEMBERSHIP IN THE APPLICANT DOES NOT APPEAR ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. IN ADDITION, THE APPLICANT DID NOT FILE AN APPLICATION FOR MEMBERSHIP WITH RESPECT TO THIS PERSON.

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10. IN THE RESULT A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11. DURING THE COURSE OF ONE OF THE VERY MANY HEARINGS IN THIS APPLICATION CERTAIN CONDUCT OCCURRED WHICH INTERVENER #1 ATTRIBUTED TO THE APPLICANT. THIS CONDUCT MAY BE CONSIDERED AS FALLING INTO TWO CATEGORIES. FIRSTLY, CERTAIN ALLEGED ACTS OF PICKETING CONDUCTED BY CERTAIN PERSONS IN FRONT OF THE DEPARTMENT OF LABOUR BUILDING, AND, SECONDLY A DISRUPTION OF A HEARING CONDUCTED BY THE BOARD BY THE INTRUSION INTO THE HEARING OF A THROG OF PERSONS AND CAMERAMEN. THE BOARD HAS VERY CAREFULLY CONSIDERED THE EXTENSIVE REPRESENTATIONS PLACED BEFORE IT BY THE PARTIES IN CONNECTION WITH THESE INCIDENTS. IT WAS THE REQUEST OF INTERVENER #1 TO CITE THE APPLICANT FOR CONTEMPT. THE BOARD HAS THOROUGHLY CONSIDERED THE AUTHORITIES ON THIS SUBJECT AND FINDS THAT WITH RESPECT TO THE ALLEGED CONTEMPT WHICH WAS NOT COMMITTED IN ITS PRESENCE, THE BOARD DOES NOT HAVE JURISDICTION TO CITE ANYONE FOR SUCH ALLEGED CONDUCT.

12. CONSIDERING NOW THE BEHAVIOUR WHICH WAS COMMITTED IN THE PRESENCE OF THE BOARD, AND, EVEN ASSUMING, WITHOUT DECIDING, THAT THE BOARD HAS JURISDICTION TO CITE ANYONE FOR CONTEMPT COMMITTED IN ITS PRESENCE, THE BOARD, NEVERTHELESS, HAS A DISCRETION IN DECIDING WHETHER OR NOT TO CITE A PARTICULAR PERSON FOR CONTEMPT. THE BOARD IS NOT PREPARED TO ENTERTAIN THE MOTION BY INTERVENER #1 TO CITE THE APPLICANT OR ANY PERSONS CONNECTED WITH THE APPLICANT FOR CONTEMPT IN CONNECTION WITH THE ACTIONS OUTLINED ABOVE.

1411-71-JD: NORTHDOWN DRYWALL & CONSTRUCTION LIMITED (COMPLAINANT)
V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18;
THE WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 562; RO-
BERTSON-YATES CORPORATION LIMITED (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND P.J. O'KEEFFE.

APPEARANCES AT THE HEARING: R.D. PERKINS AND GORD YOUNG FOR THE COMPLAINANT; STANLEY SIMPSON AND C. GUAGLIANO FOR UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18; A.M. MINSKY FOR THE WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 562; F.R. VON VEH, J. BROE AND J. DAVIS FOR ROBERTSON-YATES CORPORATION LIMITED.

DECISION OF O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER P.J. O'KEEFFE.
 JUNE 28, 1972.

1. IT IS ALLEGED BY THE COMPLAINANT THAT THE MATTERS AT HAND INVOLVE A JURISDICTIONAL DISPUTE BUT THAT IS DENIED BY THE RESPONDENT, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18 (HEREINAFTER REFERRED TO AS "CARPENTERS"), WHO SUBMITTED THAT THE BOARD DOES NOT HAVE JURISDICTION IN THIS MATTER.

2. THE FACTS OF THIS MATTER ARE AS FOLLOWS: ROBERTSON-YATES CORPORATION LIMITED (HEREINAFTER REFERRED TO AS "RYCo") IS A GENERAL CONTRACTOR AND CARRIES ON BUSINESS IN THE HAMILTON AREA. IT IS BOUND BY A COLLECTIVE AGREEMENT WITH CARPENTERS TO SUBCONTRACT THE WORK WHICH IS PRESENTLY IN DISPUTE TO SUBCONTRACTORS WHO HAVE COLLECTIVE AGREEMENTS WITH CARPENTERS. NOTWITHSTANDING ITS OBLIGATIONS UNDER THAT COLLECTIVE AGREEMENT RYCo ENTERED INTO A CONTRACTURAL ARRANGEMENT TO PERFORM THE WORK IN DISPUTE WITH THE COMPLAINANT SUBCONTRACTOR WHO DOES NOT HAVE A COLLECTIVE AGREEMENT WITH CARPENTERS BUT DOES HAVE A COLLECTIVE AGREEMENT WITH THE WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 562 (HEREINAFTER REFERRED TO AS "THE LATHERS"). IT IS THE INCONSISTENCY OF RYCo IN ITS CONTRACTURAL ARRANGEMENT THAT HAS BROUGHT ABOUT THE DIFFICULTIES AND THE ISSUE IN THIS CASE.

3. THE CARPENTERS IMMEDIATELY LAUNCHED A GRIEVANCE UNDER THE COLLECTIVE AGREEMENT WITH RYCo AND RYCo IN TURN HAS PUT PRESSURE ON THE COMPLAINANT TO PERFORM THE WORK WITH CARPENTERS. THE CARPENTERS, HOWEVER, DO NOT WISH TO PERFORM WORK FOR THE COMPLAINANT BECAUSE THEY DO NOT HAVE A COLLECTIVE AGREEMENT WITH THE COMPLAINANT. THE COMPLAINANT IS UNDOUBTEDLY ANXIOUS TO HAVE THE BENEFIT OF THE CONTRACT WITH RYCo BUT IT FINDS ITSELF IN A MOST DIFFICULT SITUATION. ON THE ONE HAND IT IS PRESSURED BY RYCo TO PERFORM THE WORK WITH CARPENTERS WHILE ON THE OTHER HAND IT IS CONTRACTUALLY BOUND TO PERFORM THE WORK WITH LATHERS WITH WHOM THE COMPLAINANT HAS A COLLECTIVE AGREEMENT.

4. THE LATHERS ARE UNDOUBTEDLY DESIROUS OF HAVING THE WORK PERFORMED BY THE COMPLAINANT WHO THEN WOULD BE BOUND BY ITS COLLECTIVE AGREEMENT TO USE LATHERS. THE LATHERS IN A VARIETY OF WAYS HAVE INDICATED THEIR INTEREST TO PERFORM THE WORK.

5. BASED ON THOSE FACTS WHAT WE HAVE HERE IS REALLY NOT A DISPUTE ABOUT WORK BUT A CONTRACTURAL ISSUE THAT ARISES BECAUSE OF RYCo'S INCONSISTENT CONTRACTURAL ARRANGEMENTS AND THE COMPLAINANT IS SUFFERING THE SIDE EFFECTS. WE ARE ASKED NOT TO SORT OUT WHICH OF TWO UNIONS HAS THE BETTER CLAIM TO THE WORK AT HAND, BUT TO SORT OUT THE CONTRACTURAL DILEMMA BY RYCo SO THAT IT MAY PROCEED TO GET THE WORK DONE WHILE AT THE SAME TIME HAVING THE BENEFIT OF THE EFFECTS OF SECTION 81(1) OF THE LABOUR RELATIONS ACT WHICH HAS THE EFFECT OF PERMITTING COMPLIANCE WITH A DIRECTION OF THIS BOARD TO THE EXTENT THAT SUCH COMPLIANCE "SHALL BE DEEMED NOT TO HAVE

VIOLATED ANY PROVISION...OF ANY COLLECTIVE AGREEMENT." WE ARE THUS ASKED TO BAIL OUT RYCO AND GIVE SOME ORDER TO A SITUATION THAT HAS BEEN BROUGHT ABOUT BY A FLAGRANT DISREGARD OF CONTRACTURAL COMMITMENTS AND MOREOVER TO DO SO IN A MANNER THAT MAY ABSOLVE OR SHIELD THE PARTIES FROM THEIR ABUSES.

6. WE DECLINE TO DO SO. WE RECOGNIZE THAT THIS BOARD HAS AN OBLIGATION TO MAINTAIN INDUSTRIAL PEACE. WE RECOGNIZE FURTHER THAT THERE IS AN OBLIGATION ON THE INDUSTRY TO ASSIST IN MAINTAINING INDUSTRIAL PEACE BY CONDUCTING ITS AFFAIRS IN AN ORDERLY AND CAREFUL MANNER SO AS TO AVOID THE TENSIONS AND CONFLICTS THAT ARE ALREADY RAMPANT IN THE CONSTRUCTION INDUSTRY. THERE MUST BE SOME FORM OF SELF-HELP OR POLICING BY THE INDUSTRY. THIS BOARD IS NOT TO BE VIEWED AS A PANACEA FOR THE ILLS OF THE CONSTRUCTION INDUSTRY. WE DO NOT SIT AS SOLOMON EVER READY TO DIVIDE THE BABY. WE EXPECT THAT THE PARTIES WILL EXERCISE SOME SELF-RESTRAINT IN THEIR AFFAIRS AND NOT EXPECT THIS BOARD TO BE A FORUM WHICH ABSOLVES THEM FROM THEIR EXCESSES.

7. WE ARE NOT PREPARED TO MAKE AN ORDER IN THE FACTS OF THIS CASE. UNDER SECTION 81(1) WE ARE GIVEN THE POWER TO DIRECT WHAT ACTION, IF ANY, THE PARTIES SHALL DO OR REFRAIN FROM DOING AND ASSUMING THE FACTS AS PUT FORTH BY THE PARTIES THIS IS A CASE WHERE WE WOULD NOT BE PREPARED TO MAKE ANY DIRECTION, AND ON WHAT BASIS ALONE WE ARE NOT PREPARED TO PROCEED WITH THE APPLICATION.

8. A FURTHER REASON FOR NOT PROCEEDING IS THAT WE ARE ALSO DEVOID OF JURISDICTION. COUNSEL FOR THE COMPLAINANT SUGGESTS THAT OUR JURISDICTION IS UNDER SECTION 81(1). HE RELIES ON THAT PORTION OF SECTION 81(1) WHICH SAYS:

"THE BOARD MAY INQUIRE INTO A COMPLAINT THAT...AN OFFICER...OF A TRADE UNION...IS REQUIRING AN EMPLOYER...TO ASSIGN PARTICULAR WORK TO PERSONS IN A PARTICULAR TRADE UNION RATHER THAN TO PERSONS IN ANOTHER TRADE UNION..."

COUNSEL FOR THE COMPLAINANT COMPLAINS THAT MR. WELLER, ON BEHALF OF THE LATHERS, IS REQUIRING THE COMPLAINT TO ASSIGN THE WORK TO LATHERS "RATHER THAN" TO CARPENTERS.

9. SECTION 81(1) PRESUPPOSES A CONFLICT BETWEEN TWO COMPETING TRADE UNIONS FOR WORK TO BE ASSIGNED BY AN EMPLOYER AND FURTHER THAT THERE IS AN ASSIGNMENT OR CONTEMPLATED ASSIGNMENT TO ONE TRADE UNION WHICH MAY RESULT IN SOME CONFLICT BECAUSE ANOTHER TRADE UNION IS REQUIRING THAT ASSIGNMENT. IN THIS CASE THERE IS NO ACTUAL ASSIGNMENT

OR CONTEMPLATED ASSIGNMENT TO THE CARPENTERS BECAUSE THEY HAVE INDICATED THAT THEY ARE NOT PREPARED TO ACCEPT SUCH AN ASSIGNMENT NOR HAVE THEY RECEIVED SUCH AN ASSIGNMENT. THE PARTIES ARE POSING A FICTIONAL ASSIGNMENT TO CARPENTERS WHICH HAS NO BASIS IN FACT NOR IN LAW. HOW CAN THE LATHERS REQUIRE AN ASSIGNMENT TO IT "RATHER THAN" TO CARPENTERS WHERE NO SUCH ASSIGNMENT TO THE CARPENTERS EXISTS AND THERE IS NO INDICATION THAT THE COMPLAINANT IS OR WILL BE BREACHING ITS COLLECTIVE AGREEMENT BY ASSIGNING THE WORK TO LATHERS?

10. IN ELLIS DON LIMITED V. ACME LATHING CO. LTD. ET AL [1972] OLRB MTHLY. REP. 215 THERE WERE CERTAIN SIMILARITIES TO THIS CASE. IN THAT CASE THE BOARD SAID:

"...MORE SPECIFICALLY, ACME ASSIGNED THE WORK INVOLVED...TO PERSONS IN ITS EMPLOY WHO ARE LATHERS. BUT ACME CANNOT BE SAID TO HAVE ASSIGNED THE WORK TO LATHERS RATHER THAN CARPENTERS SINCE THE RESPONDENT CARPENTERS AT NO TIME ADVISED ACME THAT THEY CLAIMED JURISDICTION OVER THE SAID WORK AND IN NO MANNER SOUGHT TO REQUIRE ACME TO ASSIGN THE WORK TO MEMBERS OF THEIR CRAFT. MOREOVER, THE COMPLAINANT, ELLIS DON LIMITED, AT NO TIME AND IN NO MANNER SOUGHT TO REQUIRE ACME TO ASSIGN THE SAID WORK TO CARPENTERS RATHER THAN LATHERS. THIS BEING SO, IN FACT, THERE IS NO WORK ASSIGNMENT DISPUTE WITHIN THE MEANING OF SUBSECTION (1) OF SECTION 81 OF THE ACT."

IN OUR CASE THE CARPENTERS ARE ALSO NOT CLAIMING THE WORK FROM THE COMPLAINANT NOR HAVE THEY RECEIVED OR DO THEY SEEK AN ASSIGNMENT ABOUT WHICH THE LATHERS COULD EXPLAIN. IN THE INSTANT CASE, AS IN ELLIS DON LIMITED, SUPRA, THERE IS NO WORK ASSIGNMENT DISPUTE.

11. WE HAVE ALSO CONSIDERED THE NORTHDOWN DRYWALL & CONSTRUCTION LIMITED V. CAMSTON LIMITED ET AL CASE (BOARD FILE NO. 1305-71-JD) REFERRED TO BY OUR COLLEAGUE MR. BELL, AND THERE DOES NOT APPEAR TO HAVE BEEN ANY ATTACK ON THE JURISDICTION OF THE BOARD TO PROCEED WITH THE MATTER AS A JURISDICTIONAL DISPUTE IN THAT CASE AS THERE WAS IN THIS CASE.

12. ACCORDINGLY, AND FOR THE REASONS GIVEN, THE COMPLAINT IS DISMISSED.

DECISION OF BOARD MEMBER J.D. BELL: JUNE 28, 1972.

1. I DISAGREE WITH THE MAJORITY THAT WE ARE DEVOID OF JURISDICTION AND I BELIEVE THAT UNDER SECTION 81(1) WE HAVE THE POWER TO

DIRECT WHAT ACTION, IF ANY, THE PARTIES SHALL DO OR REFRAIN FROM DOING. THE FACTS IN THIS CASE ARE ALMOST IDENTICAL TO THOSE HEARD IN NORTHDOWN DRYWALL & CONSTRUCTION LIMITED V. CAMSTON LIMITED ET AL (BOARD FILE No. 1305-71-JD, DATED DECEMBER 13, 1971). THE BOARD IN THIS CASE DIRECTED AS FOLLOWS:

HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE INTERIM ORDER SET OUT BELOW:

THE COMPLAINANT NORTHDOWN DRYWALL & CONSTRUCTION LIMITED SHALL ASSIGN THE WORK INVOLVED IN THE INSTALLATION OF A GRID CEILING SYSTEM INCLUDING HANDERS, T-BAR AND TILE IN THE FAIRVIEW OFFICE BUILDING, FAIRVIEW MALL, TORONTO TO EMPLOYEES WHO ARE REPRESENTED BY THE WOOD, WIRE & METAL LATHERS UNION LOCAL 562.

THIS ORDER SHALL BECOME EFFECTIVE FORTHWITH AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE BOARD ISSUES A FURTHER DIRECTION.

THE COMPLAINANT IS ALSO REQUESTING THAT THE BOARD ISSUE A DIRECTION THAT THE RESPONDENT TRADE UNIONS AND THEIR RESPECTIVE OFFICERS, OFFICIALS OR AGENTS CEASE AND DESIST FROM DOING ANYTHING INTENDED OR LIKELY TO INTERFERE WITH THE TERMS OF THE ABOVE INTERIM ORDER.

COUNSEL FOR THE COMPLAINANT AND FOR THE RESPONDENT TRADE UNIONS GAVE AN UNDERTAKING TO THE BOARD THAT THE SAID TRADE UNIONS WOULD COMPLY WITH THE TERMS OF THE INTERIM ORDER PENDING THE BOARD MAKING A DIRECTION ON THE MERITS OF THE WORK ASSIGNMENT DISPUTE.

HAVING REGARD TO THE UNDERTAKING OF COUNSEL FOR THE COMPLAINANT AND FOR THE RESPONDENT TRADE UNIONS THE REQUEST OF THE COMPLAINANT FOR THE CEASE THD DESIST ORDER IS ADJOURNED SINE DIE ON THE UNDERSTANDING THAT SHOULD THERE BE ANY BREACH OF THE ABOVE UNDERTAKING THE MATTER WILL BE LISTED FORTHWITH FOR HEARING WITH RESPECT TO THE REQUEST FOR A CEASE AND DESIST DIRECTION.

2. THE BOARD NOT ONLY ACCEPTED JURISDICTION, BUT MADE AN INTERIM ORDER AND REMAINED SEIZED OF THE MATTER TO ENSURE COMPLIANCE.

3. THEREFORE, I WOULD DIRECT THAT THIS MATTER BE LISTED FORTHWITH FOR HEARING.

1287-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. J. E. MARTEL & SONS LUMBER LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

APPEARANCES AT THE HEARING: M. LEVINSON, J. HORAN AND DONALD BAZINET FOR THE APPLICANT; L. J. VALIN, Q.C., K. R. VALIN AND JEAN MARTEL FOR THE RESPONDENT; NO ONE APPEARING FOR THE OBJECTORS.

DECISION OF THE BOARD: JUNE 29, 1972.

1. PURSUANT TO THE DECISION OF THE BOARD IN THIS MATTER DATED MARCH 7, 1972, SEPARATE REPRESENTATION VOTES WERE CONDUCTED ON APRIL 6, 1972 IN RELATION TO TWO BARGAINING UNITS WHICH CONSISTED ESSENTIALLY OF THE RESPONDENT'S MILL AND BUSH EMPLOYEES RESPECTIVELY. HOWEVER, PRIOR TO THE TIME OF THE TAKING OF THESE REPRESENTATION VOTES, MR. SACK, ON BEHALF OF THE APPLICANT BY LETTER DATED APRIL 4, 1972, NOTIFIED THE BOARD AS FOLLOWS:

"I HAVE BEEN ADVISED BY THE UNION WHICH IS PURSUING INVESTIGATION AND WILL BE REPORTING FURTHER PARTICULARS TO ME THAT JEAN MARTEL MADE PROMISES OF BENEFITS TO THE EMPLOYEES ON MARCH 29, 1972 WITH A VIEW TO INFLUENCING THEIR VOTE CONTRARY TO THE ACT. UPON RECEIPT FURTHER PARTICULARS WILL BE FILED WITH THE BOARD.

IN LIGHT OF THE ABOVE, THE UNION REQUESTS OUTRIGHT CERTIFICATION UNDER SECTION 7(5)."

2. THE MATTER WAS PURSUED FURTHER BY MR. LEVINSON ON BEHALF OF THE APPLICANT AND BY LETTER DATED APRIL 11, 1972, HE ADVISED THE BOARD AS FOLLOWS:

"RECEIPT IS ACKNOWLEDGED OF THE REPORTS OF THE RETURNING OFFICER DATED APRIL 6, 1972. THE APPLICANT DESIRES A HEARING BEFORE THE BOARD TO MAKE REPRESENTATIONS AND PRESENT

EVIDENCE IN RESPECT OF A REQUEST THAT THE APPLICANT BE CERTIFIED OUTRIGHT UNDER SECTION 7(5) OF THE LABOUR RELATIONS ACT.

AS STATED IN OUR LETTER DATED APRIL 4, 1972, THE APPLICANT WISHES TO MAKE REPRESENTATIONS AND PRESENT EVIDENCE RELATING TO MISCONDUCT OF THE COMPANY IN THE COURSE OF THE PERIOD LEADING UP TO THE REPRESENTATION VOTE, AND, IN PARTICULAR, STATEMENTS MADE BY MR. JEAN MARTEL, A MEMBER OF MANAGEMENT OF THE COMPANY, TO EMPLOYEES ON MARCH 29, 1972, PROMISING WAGE INCREASES AND OTHER EMPLOYMENT BENEFITS IF THE UNION DID NOT WIN THE VOTE."

3. HOWEVER, BY LETTER DATED APRIL 22, 1972, MR. KENNETH VALIN, ON BEHALF OF THE RESPONDENT ADVISED AS FOLLOWS:

"THE LETTER BY THE APPLICANT'S SOLICITOR TO THE BOARD, DATED APRIL 11TH LAST, IS LACKING PARTICULARS, IN THAT THE LETTER DOES NOT NAME THE EMPLOYEES ALLEGEDLY SPOKEN TO BY JEAN MARTEL, NOR ARE THERE ANY DATES, PLACES OR SPECIFICS RELATING TO ANY ALLEGED MISCONDUCT ON THE PART OF THE RESPONDENT. WE HAVE INVESTIGATED THE MATTER; THERE HAS BEEN NO MISCONDUCT ON THE PART OF THE RESPONDENT PRIOR TO THE REPRESENTATION VOTE, OR AT ANY TIME. IT IS THEREFORE QUITE EVIDENT THAT THE ALLEGATIONS OF THE APPLICANT'S SOLICITOR ARE MERELY A STALLING TACTIC.

WE REQUEST THAT THE BOARD DISMISS THE APPLICATION."

4. MR. SACK'S REPLY BY LETTER DATED MAY 1, 1972, IS:

"WE DO NOT AGREE WITH THE SUBMISSION MADE BY THE RESPONDENT'S SOLICITOR IN HIS LETTER TO THE BOARD DATED APRIL 22ND, 1972."

5. BY LETTER DATED JUNE 7, 1972, MR. SACK ADVISED MR. KENNETH VALIN AS FOLLOWS:

"YOU TELEPHONED ME YESTERDAY TO ASK FOR AN ADJOURNMENT OF THIS MATTER ON BEHALF OF YOUR CLIENTS. I REGRET TO SAY THAT MY CLIENTS

CANNOT CONSENT TO ANY ADJOURNMENT OF THIS MATTER. SO FAR AS YOUR REQUEST FOR FURTHER PARTICULARS IS CONCERNED I REFER TO MY LETTER OF APRIL 11, 1972 WHICH SETS OUT THE NAME, DATES AND SUBSTANCE OF THE CHARGES OF MIS-CONDUCT. SO FAR AS THE NAMES OF THE EMPLOYEES TO WHOM SUCH STATEMENTS WERE MADE ARE CONCERNED, THE BOARD HAS NEVER REQUIRED THAT SUCH NAMES BE DISCLOSED PRIOR TO THE HEARING AND, FOR THE PROTECTION OF SUCH PERSONS, WE DO NOT PROPOSE TO DO SO AT THIS TIME."

6. BY LETTER DATED JUNE 8, 1972, MR. LLOYD VALIN ADVISED THE BOARD:

"WE ENCLOSE HERewith COPIES OF LETTERS DATED APRIL 4TH, 1972, APRIL 11TH, 1972 AND JUNE 7TH, 1972 RECEIVED FROM LEVINSON, SACK AND DUNN, BARRISTERS AND SOLICITORS, TORONTO, ONTARIO WHICH PURPORT TO CONTAIN ALL OF THE PARTICULARS AS TO A COMPLAINT AGAINST OUR CLIENT, J. E. MARTEL & SONS LIMITED WITH REFERENCE TO CONDUCT OF AN EMPLOYEE REPRESENTATIVE OF MANAGEMENT NAMELY, JEAN MARTEL PRIOR TO TAKING OF THE REPRESENTATIVE VOTE AT THE COMPANY'S PREMISES. WE, ON BEHALF OF OUR CLIENTS ALLEGE THAT THE PARTICULARS SET OUT DO NOT COMPLY WITH SECTION 47 OF THE RULES OF PROCEDURE AND REGULATIONS UNDER THE LABOUR RELATIONS ACT OF ONTARIO.

THE COMPLAINT IS SO INDEFINITE AND INCOMPLETE AS TO HAMPER OUR CLIENTS AND OURSELVES IN PREPARING OUR CLIENTS'S CASE.

THEREFORE, WE REQUEST THE BOARD IN ACCORDANCE WITH REGULATION 47(3) TO DIRECT THAT THE INFORMATION STATED BE MADE SPECIFIC AND COMPLETE OR IN THE ALTERNATIVE TO STRIKE OUT THE STATEMENT FROM THE APPLICATION, COMPLAINT OR DOCUMENT."

7. FINALLY, BY LETTER DATED JUNE 16, 1972, MR. LEVINSON STATES:

"WE HAVE RECEIVED A NUMBER OF LETTERS IN CONNECTION WITH THE ABOVE CASE AND PARTICULARLY AS IT RELATES TO THE HEARING WHICH WILL BE HELD ON THE 22ND OF JUNE AND POSSIBLY THE 23RD OF JUNE.

IN OUR LETTER OF APRIL 11, 1972, WE INDICATED THAT WE WERE ASKING FOR THE RIGHT TO BE CERTIFIED UNDER SECTION 7(4) AND WILL BE ADDUCING EVIDENCE OF MISCONDUCT OF CERTAIN OFFICERS OF THE COMPANY IN RESPECT TO THE REPRESENTATION VOTE.

IN OUR LETTER OF APRIL 11TH, WE ALLEGED THAT MR. JEAN MARTEL, A MEMBER OF MANAGEMENT, DID ON MARCH 29, 1972 PROMISE WAGE INCREASES AND OTHER EMPLOYMENT BENEFITS IF THE UNION DID NOT WIN THE VOTE. SINCE THE CHARGES WAS FILED WITH THE BOARD, WE HAVE RECEIVED TWO LETTERS FROM MR. VALIN, SOLICITOR FOR THE COMPANY, ALLEGING THAT THE CHARGES ARE SO INDEFINITE AS TO HAMPER HIS CLIENTS IN PREPARING THEIR CASE AND REQUESTED THAT THE BOARD IN ACCORDANCE WITH RULE 47(3) DIRECT THAT THE CHARGES BE MADE MORE SPECIFIC. IN THIS REGARD, WE WOULD DO THE FOLLOWING:

THE STATEMENTS MADE BY MR. JEAN MARTEL ON MARCH 29TH, WERE MADE TO A NUMBER OF EMPLOYEES IN THE OFFICE OF THE COMPANY. NOT ONLY WERE WAGE INCREASES PROMISED IF THE UNION DID NOT WIN THE VOTE, BUT ALSO CERTAIN IMPROVEMENTS WERE TO BE MADE IN STATUTORY HOLIDAYS.

IT IS OUR VIEW ON THE BASIS OF THE BOARD'S JURISPRUDENCE THAT WE ARE NOT REQUIRED TO GIVE TO THE RESPONDENT ANY NAMES OF PERSONS TO WHOM THESE INDUCEMENTS WERE MADE.

IT IS OUR VIEW THAT WE HAVE COMPLIED WITH THE REQUIREMENTS OF RULE 47(3)."

8. COUNSEL FOR THE RESPONDENT AT THE COMMENCEMENT OF THE HEARING OF THIS MATTER ON JUNE 22, 1972, RENEWED HIS REQUEST TO DISMISS THE CHARGES. IN THIS REGARD, HE ARGUED THAT THE LETTERS OF THE APPLICANT DATED APRIL 4 AND APRIL 11, RESPECTIVELY, REFER TO SECTION 7(5) OF THE ACT, A NON-EXISTENT PROVISION. ALTHOUGH THIS ERROR WAS CORRECTED IN MR. LEVINSON'S LETTER OF JUNE 16, 1972, MR. LLOYD VALIN STATED THAT HE HAS NOT AS YET RECEIVED A COPY OF SUCH CORRESPONDENCE. HE ALSO DREW ATTENTION TO THE FACT THAT NO SPECIFIC SECTION OF THE ACT HAS BEEN ALLEGED TO HAVE BEEN BREACHED.

9. THE INTERIM RULING OF THE BOARD ON THESE MATTERS WAS TO THE EFFECT THAT THE FAILURE TO CITE A VIOLATION OF A SPECIFIC PROVISION OF THE ACT WAS NOT FATAL TO THE VALIDITY OF THESE CHARGES AS MIGHT BE THE CASE IN SECTION 79 PROCEEDINGS UNDER THE ACT. NOR WERE WE UNDULY IMPRESSED WITH THE FACT THAT THE APPLICANT'S CORRESPONDENCE REFERS TO A SECTION 7(5) CITATION. IN OUR OPINION, AN EXPERIENCED COUNSEL IN LABOUR RELATIONS MATTERS WOULD NOT BE MISLED AS IT WOULD BE OBVIOUS IN THESE CIRCUMSTANCES THAT THE APPLICANT'S COUNSEL WAS IN FACT ALLUDING TO SECTION 7(4) OF THE ACT.

10. HOWEVER, OF GREATER CONCERN TO US WAS THE LACK OF PARTICULARITY IN THE CHARGES CONCERNING WHICH EMPLOYEES WERE BEING REFERRED TO BY THE APPLICANT. IN THIS REGARD WE NOTE THAT THERE WERE IN FACT TWO BARGAINING UNITS DEFINED IN THE DECISION OF THE BOARD DATED MARCH 7, 1972 WHEREIN TWO SEPARATE VOTES WERE ORDERED IN RELATION TO THE MILL EMPLOYEES AND THE BUSH EMPLOYEES RESPECTIVELY.

11. WE ACCEPT THE POSITION TAKEN BY COUNSEL FOR THE APPLICANT TO THE EFFECT THAT HE IS NOT REQUIRED TO SUPPLY THE RESPONDENT WITH THE SPECIFIC NAMES OF THOSE EMPLOYEES UPON WHOM HE WILL BE CALLING UPON AS WITNESSES IN THESE PROCEEDINGS TO SUBSTANTIATE HIS CHARGES. NEVERTHELESS WE ARE OF THE OPINION THAT THE RESPONDENT WAS IN THE UNCERTAIN POSITION AT THE START OF THIS HEARING OF NOT KNOWING WHETHER THE CHARGES WERE IN RELATION TO THE REPRESENTATION VOTE CONDUCTED AMONG THE MILL EMPLOYEES OR TO THE REPRESENTATION VOTE CONDUCTED AMONG THE BUSH EMPLOYEES OR TO THE RESPECTIVE EMPLOYEES INVOLVED IN EITHER OF THE TWO VOTES.

12. COUNSEL FOR THE APPLICANT THEN ADVISED COUNSEL FOR THE RESPONDENT THAT THE CHARGES RELATED ONLY TO THE MILL EMPLOYEES AND THAT HE HAD NO OBJECTIONS RELATING TO THE REPRESENTATION VOTE INVOLVING THE BUSH EMPLOYEES. WHEN THE BOARD INDICATED THAT IT WOULD NEVERTHELESS PROCEED WITH THE CHARGES AS PERFECTED BY THESE PARTICULARS, COUNSEL FOR THE RESPONDENT REQUESTED AN ADJOURNMENT OF THESE PROCEEDINGS TO ENABLE HIM TO CONDUCT A FURTHER INVESTIGATION AT CHAPLEAU IN THE LIGHT OF THESE FRESH MATTERS WHICH HAD ONLY COME TO LIGHT AT THIS HEARING.

13. HAVING REGARD TO ALL OF THE THESE CIRCUMSTANCES, WE FIND THAT THE APPLICANT HAS DISPLAYED CARELESSNESS IN RELATION TO THE FILING OF ITS CHARGES IN THESE PROCEEDINGS. ON THE OTHER HAND, IT IS ARGUABLE THAT IT WAS OPEN TO COUNSEL FOR THE RESPONDENT TO FURTHER PARTICULARISE HIS DEMAND FOR PARTICULARS ESPECIALLY WITH REGARD TO WHICH REPRESENTATION VOTE WAS ALLEGED TO BE IMPROPERLY CONDUCTED. ALTHOUGH THESE CIRCUMSTANCES DID NOT IN OUR VIEW WARRANT A FINDING BY THIS BOARD THAT THE SAID CHARGES BE DISMISSED, NEVERTHELESS WE ARE OF THE OPINION THAT FAILURE TO PROVIDE COMPLETE PARTICULARS UNTIL

THE TIME OF THE HEARING, ENTITLES COUNSEL FOR THE RESPONDENT TO THE REMEDY REQUESTED AND WE HEREBY CONFIRM OUR DECISION GIVEN ORALLY AT THE HEARING GRANTING AN ADJOURNMENT OF THESE PROCEEDINGS TO A DATE TO BE SET BY THE REGISTRAR.

14. HAVING REGARD TO THE FACT THAT THE BUSH EMPLOYEES ARE UNAFFECTED BY THE CONTINUATION OF THESE PROCEEDINGS, WE ARE PREPARED TO DISPOSE OF THIS APPLICATION FOR CERTIFICATION INsofar AS IT RELATES TO THESE EMPLOYEES, AT THE REQUEST OF COUNSEL FOR THE RESPONDENT AND WITH THE CONCURRENCE OF COUNSEL FOR THE APPLICANT.

15. ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD NOT MORE THAN FIFTY PER CENT OF THE BALLOTS CAST IN BARGAINING UNIT #1 WERE CAST IN FAVOUR OF THE APPLICANT.

16. THIS APPLICATION INsofar AS IT RELATES TO BARGAINING UNIT #1 IS THEREFORE DISMISSED.

17. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE REPRESENTATION VOTE TAKEN IN THIS MATTER WITH RESPECT TO BARGAINING UNIT #1 FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

1727-71-R: CANADIAN TEXTILE & CHEMICAL UNION (APPLICANT) V. PURETEX KNITTING CO. LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H. ADE AND O. HODGES.

APPEARANCES AT THE HEARING: N. ENDICOTT AND R. K. ROWLEY FOR THE APPLICANT; E. L. STRINGER, Q.C., D. BRISBIN, G. SATOK AND L. CAPPE FOR THE RESPONDENT.

DECISION OF THE BOARD:

JUNE 30, 1972.

1. THE EVENTS WHICH LED TO THE BOARD'S INQUIRY WITH RESPECT TO THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT ON BEHALF OF NICK NOZUYE ARE SET OUT IN THE BOARD'S DECISION IN THIS MATTER DATED JUNE 15, 1972. AT A HEARING ON APRIL 28, 1972, THE BOARD REQUIRED INTO AN ALLEGATION MADE BY THE RESPONDENT THAT NICK NOZUYE DID NOT PAY THE ONE DOLLAR FEE SHOWN ON HIS APPLICATION FOR MEMBERSHIP TO WILLIAM SPIRA, THE PERSON SHOWN ON THE MEMBERSHIP CARD AS COLLECTOR, AND NO EXCEPTIONS WERE LISTED TO PARAGRAPH 3 OF FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, SIGNED BY R. KENT ROW-

LEY, WHICH WAS FILED BY THE APPLICANT. IN MAKING ITS INQUIRY THE BOARD CALLED BOTH NOZUYE AND SPIRA AS WITNESSES AND FOLLOWING THE BOARD'S OWN EXAMINATION OF THEM, THEY WERE CROSS-EXAMINED BY COUNSEL FOR THE RESPONDENT AND COUNSEL FOR THE APPLICANT.

2. AT THE CONTINUATION OF HEARING ON JUNE 26, 1972, COUNSEL FOR THE APPLICANT AND THE RESPONDENT ADVISED THE BOARD THAT THEY WERE NOT CALLING ANY WITNESSES TO TESTIFY WITH RESPECT TO THE ABOVE ALLEGATION. THE BOARD ACCORDINGLY THEREUPON CALLED UPON COUNSEL TO MAKE THEIR SUBMISSIONS AS TO THE WEIGHT, IF ANY, THAT SHOULD BE GIVEN TO THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT HAVING REGARD TO THE TESTIMONY OF NOZUYE AND SPIRA.

3. THE APPLICATION FOR MEMBERSHIP CARD SUBMITTED BY THE APPLICANT ON BEHALF OF NICK NOZUYE IS SET OUT BELOW:

CANADIAN TEXTILE AND CHEMICAL UNION

I, THE UNDERSIGNED, HEREBY REQUEST AND ACCEPT MEMBERSHIP IN THE CANADIAN TEXTILE AND CHEMICAL UNION, AND HEREBY AUTHORIZE ITS REPRESENTATIVES TO BARGAIN FOR ME IN ALL MATTERS PERTAINING TO MY EMPLOYMENT.

NAME	NICK NOZUYE	DATE	OCT. 27TH 1971
ADDRESS	60 MASSEY ST.	TEL.	368-9241
	PURETEX KNITTING CO. LTD.		
COMPANY		DEPT.	SHIPPER
		SHIFT	
\$1.00 FEE RECEIVED BY	"N. NOZUYE" (SIGNATURE OF APPLICANT)		
	"WILLIAM SPIRA" (SIGNATURE OF COLLECTOR)		

I HEREBY CERTIFY THAT I PAID THE ABOVE AMOUNT.

DATE	JAN. 31 1972	"N. NOZUYE" (SIGNATURE OF APPLICANT)
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4. THE TESTIMONY OF BOTH NOZUYE AND SPIRA WAS CONFUSED AND AT TIMES INCONSISTENT. MOREOVER, THERE ARE SERIOUS CONFLICTS VIS-A-VIS EACH OTHER'S EVIDENCE. THE UNSATISFACTORY NATURE OF MUCH OF THEIR TESTIMONY MAY BE ATTRIBUTABLE, IN PART AT LEAST, TO THE FACT

THAT THEY WERE TRYING TO RECOLLECT EVENTS THAT OCCURRED FROM THREE TO SIX MONTHS PRIOR TO THE TIME AT WHICH THEY TESTIFIED IN THESE PROCEEDINGS. HAVING CAREFULLY APPRAISED ALL OF THEIR EVIDENCE, HOWEVER, OUR FINDINGS OF FACT AS TO THE CIRCUMSTANCES SURROUNDING NOZUYE'S SIGNING A MEMBERSHIP CARD IN THE APPLICANT TRADE UNION, HIS PAYMENT OF A ONE DOLLAR MEMBERSHIP FEE AND SPIRA'S ROLE IN THE MATTER ARE SET OUT BELOW.

5. ON OCTOBER 27, 1971, WHILE NOZUYE WAS AT WORK, ROSA INGRALDI AND ANOTHER UNIDENTIFIED FEMALE EMPLOYEE ASKED HIM TO SIGN A MEMBERSHIP CARD IN THE APPLICANT TRADE UNION. NOZUYE AGREED TO DO SO AND COMPLETED THE UPPER PORTION OF THE MEMBERSHIP CARD SET OUT IN PARAGRAPH 3, INCLUDING THE PLACING OF HIS SIGNATURE ABOVE THE FIRST LOCATION WHERE THE WORDS "SIGNATURE OF APPLICANT" APPEARS ON THE CARD. ROSA INGRALDI ASKED HIM TO PAY A ONE DOLLAR FEE AT THE TIME HE SIGNED THE CARD. NOZUYE TOLD HER HE DID NOT HAVE A DOLLAR BUT THAT HE WOULD PAY IT LATER. A FEW DAYS THEREAFTER, THE CARD WHICH NOZUYE HAD SIGNED WAS GIVEN TO SPIRA BY AN UNIDENTIFIED PERSON. SPIRA WAS IN CHARGE OF THE ORGANIZING CAMPAIGN AMONG THE EMPLOYEES OF THE RESPONDENT WHICH COMMENCED IN OCTOBER OF 1971 AND IS EMPLOYED BY THE APPLICANT. SPIRA WAS AWARE THAT NOZUYE HAD NOT PAID THE ONE DOLLAR FEE AT THE TIME THE CARD WAS GIVEN TO HIM BUT KEPT THE CARD IN HIS POSSESSION.

6. NOZUYE REGULARLY DROVE ROSA INGRALDI TO WORK EACH DAY IN HIS CAR AND FOR THIS SERVICE HE CHARGED HER ONE DOLLAR PER WEEK. LATE IN JANUARY OF 1972 WHEN SHE OFFERED HIM HER WEEKLY PAYMENT OF ONE DOLLAR, NOZUYE TOLD HER TO GIVE THE DOLLAR TO ROSALBA CRAMAROSSA, A FEMALE EMPLOYEE WITH WHOM ROSA WORKED, AS PAYMENT OF THE ONE DOLLAR FEE WHICH HE OWED ON THE MEMBERSHIP CARD WHICH HE HAD SIGNED. WITHIN A FEW DAYS ROSALBA CRAMAROSSA MET SPIRA OUTSIDE THE RESPONDENT'S PREMISES AND ON THAT OCCASION ADVISED HIM THAT SHE HAD RECEIVED NOZUYE'S ONE DOLLAR FEE FOR THE MEMBERSHIP CARD WHICH HE HAD SIGNED. SHE GAVE THE ONE DOLLAR TO SPIRA SHORTLY THEREAFTER AT HER HOME. SPIRA COMPLETED THE DETACHABLE RECEIPT PORTION OF NOZUYE'S CARD AND INSTRUCTED ROSALBA TO GIVE IT TO NOZUYE. ROSALBA TOOK NOZUYE'S MEMBERSHIP CARD AND THE RECEIPT TO HIM IN THE PLANT. SHE GAVE HIM THE RECEIPT AND NOZUYE PLACED HIS SIGNATURE ON THE BOTTOM OF THE CARD CERTIFYING THAT HE HAD PAID THE ONE DOLLAR FEE. ROSALBA RETURNED THE MEMBERSHIP CARD THAT HAD BEEN COMPLETED BY NOZUYE TO SPIRA AND ADVISED HIM THAT SHE HAD GIVEN THE RECEIPT FOR THE ONE DOLLAR TO NOZUYE. SPIRA THEREUPON SUBMITTED THE MEMBERSHIP CARD FOR NOZUYE, TOGETHER WITH OTHER MEMBERSHIP CARDS, TO R. KENT ROWLEY, THE PRESIDENT OF THE APPLICANT UNION AND THE PERSON WHO COMPLETED THE FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, WHICH WAS FILED WITH THE BOARD.

7. SPIRA TESTIFIED THAT HE WENT TO NOZUYE'S HOME ON TWO OCCASIONS IN NOVEMBER OF 1971 AND THAT NOZUYE ACKNOWLEDGED THAT HE HAD SIGNED THE MEMBERSHIP CARD WHICH SPIRA SHOWED TO HIM. ACCORDING TO SPIRA, ALTHOUGH HE ASKED NOZUYE TO PAY THE DOLLAR FEE, ON NEITHER OCCASION DID NOZUYE DO SO ALTHOUGH HE ASSURED SPIRA EACH TIME THAT HE WOULD PAY. THE EVIDENCE OF SPIRA IS THAT AFTER HIS FIRST VISIT TO NOZUYE'S HOME, HE (SPIRA) SIGNED NOZUYE'S MEMBERSHIP CARD AS COLLECTOR. NOZUYE IN HIS TESTIMONY DID NOT RECALL SPIRA EVER COMING TO HIS HOME OR ASKING HIM FOR THE ONE DOLLAR FEE. ALTHOUGH SPIRA SIGNED NOZUYE'S CARD AS COLLECTOR IN THE FALL OF 1971, HE ONLY SUBMITTED THE CARD TO ROWLEY AFTER ROSALBA GAVE HIM THE DOLLAR WHICH SHE ADVISED HIM WAS THE DOLLAR FEE PAID BY NOZUYE AND AFTER NOZUYE HAD SIGNED HIS MEMBERSHIP CARD CERTIFYING THAT HE HAD PAID THE ONE DOLLAR FEE.

8. WE ARE SATISFIED ON THE EVIDENCE THAT ROWLEY MADE THE INQUIRIES OF SPIRA REQUIRED BY PARAGRAPH 3 OF FORM 8 AT THE TIME THAT SPIRA SUBMITTED THE MEMBERSHIP CARD FOR NOZUYE TO HIM (ROWLEY). FOR THAT MATTER, BASED ON THE EVIDENCE, WE ARE SATISFIED THAT ROWLEY MADE THE NECESSARY INQUIRIES OF SPIRA WITH RESPECT TO ALL OF THE MEMBERSHIP CARDS ON WHICH HE SIGNED AS COLLECTOR. SPIRA, HOWEVER, DID NOT ADVISE ROWLEY OF THE CIRCUMSTANCES UNDER HE HAD RECEIVED THE ONE DOLLAR FEE FOR NOZUYE'S MEMBERSHIP CARD. SPIRA TESTIFIED THAT SINCE ROSALBA CRAMAROSSA HAD GIVEN THE ONE DOLLAR TO HIM AND TOLD HIM THAT IT WAS PAID BY NOZUYE ON THE MEMBERSHIP CARD WHICH HE HAD SIGNED IN OCTOBER, HE (SPIRA) REGARDED HIMSELF AS THE COLLECTOR.

9. ROWLEY HAVING MADE THE PROPER INQUIRIES OF SPIRA CONCERNING NOZUYE'S MEMBERSHIP CARD, WE FIND NO DEFICIENCY IN THE FORM 8 FILED WITH THE BOARD. IT WOULD APPEAR THAT THERE MAY HAVE BEEN A MISCONCEPTION IN SPIRA'S MIND AS TO THE NATURE OF THE DISCLOSURES WHICH HE WAS CALLED UPON TO MAKE TO ROWLEY. CERTAINLY SPIRA SHOULD HAVE REVEALED TO ROWLEY THE CIRCUMSTANCES UNDER WHICH HE RECEIVED THE DOLLAR FEE FOR NOZUYE'S MEMBERSHIP CARD. BE THAT AS IT MAY, WE DO NOT FIND THAT SPIRA INTENTIONALLY ATTEMPTED TO MISLEAD OR DECEIVE EITHER ROWLEY OR THE BOARD.

10. SPIRA WAS NOT THE PERSON WHO ACTUALLY COLLECTED THE ONE DOLLAR FEE FROM NOZUYE AND THEREFORE HE WAS NOT THE COLLECTOR AS DEFINED IN PARAGRAPH 3 OF FORM 8. AS FAR AS WE ARE CONCERNED, SPIRA UNQUESTIONABLY ERRED IN SIGNING NOZUYE'S MEMBERSHIP CARD AS THE COLLECTOR OF THE ONE DOLLAR FEE. HOWEVER, HAVING REGARD TO THE WORDING OF THE MEMBERSHIP CARD, SPIRA'S EXPLANATION AS TO WHY HE BELIEVED HE WAS ENTITLED TO SIGN THE CARD AS COLLECTOR IS NOT UNREASONABLE. ACCORDINGLY, WE ARE PREPARED TO GIVE HIM THE BENEFIT OF THE DOUBT ON HIS STATEMENT THAT HE REGARDED HIMSELF AS THE

COLLECTOR. FURTHER, WE ARE NOT PREPARED TO MAKE ANY INFERENCE WHICH WOULD CAST DOUBT ON THE REMAINING MEMBERSHIP CARDS SUBMITTED BY THE APPLICANT WHICH SPIRA SIGNED AS COLLECTOR. THE CRUCIAL AND CENTRAL FACTS IN THIS WHOLE MATTER, HOWEVER, ARE THAT NOZUYE DID, ON HIS OWN BEHALF, PAY THE ONE DOLLAR FEE SHOWN ON HIS MEMBERSHIP CARD WHICH WAS SUBMITTED BY THE APPLICANT AND THAT R. KENT ROWLEY DID MAKE THE NECESSARY INQUIRIES PRIOR TO COMPLETING THE FORM 8 WHICH HE FILED WITH THE BOARD.

11. IN LIGHT OF ALL OF THE FOREGOING, THE BOARD IS PREPARED TO ACCEPT, WITHOUT QUALIFICATION, ALL OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN SUPPORT OF THE INSTANT APPLICATION FOR CERTIFICATION.

12. WE WOULD MENTION THAT WE HAVE CAREFULLY REVIEWED THE PRIOR DECISIONS OF THE BOARD IN WHICH IT HAS DEALT WITH ALLEGED IMPROPRIETIES OR DEFECTS IN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY TRADE UNIONS IN SUPPORT OF APPLICATIONS FOR CERTIFICATION. WE ARE SATISFIED THAT ALL OF THE EARLIER DECISIONS ARE DISTINGUISHABLE ON THEIR FACTS. THAT IS TO SAY, IN SOME INSTANCES THE BOARD FOUND THAT PERSONS ON WHOSE BEHALF AN APPLICANT UNION HAD SUBMITTED EVIDENCE OF MEMBERSHIP HAD NOT PAID THE INITIATION FEE SHOWN ON THE MEMBERSHIP CARDS ON THEIR OWN BEHALF. IN MOST OF THE EARLIER CASES, HOWEVER, THE BOARD FOUND THAT THE PERSON WHO SIGNED THE FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, HAD NOT MADE THE NECESSARY INQUIRIES FROM THE COLLECTORS, OR ANY INQUIRIES AT ALL, TO ENSURE THAT THE INFORMATION CONTAINED THEREIN WAS ACCURATE AND FOR THAT REASON DISMISSED THE APPLICATIONS. (SEE VALLEY TRANSPORTATION COMPANY LIMITED OLRB M.R. NOVEMBER 1963 P. 448; WALTER E. SELCK OF CANADA LIMITED OLRB M.R. JUNE 1964 P. 138; DOMINION STORES LIMITED OLRB M.R. DECEMBER 1964 P. 447; ESSEX WIRE CORPORATION LIMITED OLRB M.R. OCTOBER 1965 P. 490; NATIONAL STEEL CAR CORPORATION LIMITED OLRB M.R. JANUARY 1966 P. 738; COLLINGWOOD SHIPYARDS, DIVISION OF CANADIAN SHIPBUILDING & ENGINEERING LTD. 67 CLLC 986; A. G. SIMPSON COMPANY LIMITED OLRB M.R. SEPTEMBER 1971 P. 615; STANLEY STEEL COMPANY LIMITED OLRB M.R. FEBRUARY 1972 P. 181; ZEHR'S MARKETS LIMITED (JUNE 22, 1972) BOARD FILE NO. 1632-71-R.) IN THE INSTANT CASE, UNLIKE THOSE CITED ABOVE, THE BOARD IS SATISFIED THAT ROWLEY, WHO SIGNED THE FORM 8, DID MAKE THE NECESSARY INQUIRIES AND BASED ON THE INFORMATION HE RECEIVED, THE FORM 8 WHICH HE COMPLETED WAS ACCURATE.

13. THE BOARD ACCORDINGLY FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

14. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES,

PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

15. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 21, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

16. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1912-72-U: CSAO NATIONAL (INC.) (COMPLAINANT) V. OTTAWA GENERAL HOSPITAL (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: STEPHEN T. GOUDGE, TERENCE O'DELL AND J. A. KHODADEEN FOR THE COMPLAINANT; D. CHURCHILL-SMITH, Q.C. AND R. RIVET FOR THE RESPONDENT.

DECISION OF VICE CHAIRMAN RORY F. EGAN AND BOARD MEMBER J. D. BELL: JUNE 30, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT J. A. KHODADEEN HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 70(2) OF THE ACT.

2. IN THE COURSE OF ARGUMENT REFERENCE WAS MADE TO SECTION 70(1) OF THE ACT AND FOR THAT REASON, RELEVANT PORTIONS OF SECTION 70 ARE SET OUT BELOW:

- (1) WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 13 OR SECTION 45 AND NO COLLECTIVE AGREEMENT IS IN OPERATION, NO EMPLOYER SHALL, EXCEPT WITH THE CONSENT OF THE TRADE UNION, ALTER THE RATES OF WAGES OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY, OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES, AND NO TRADE UNION SHALL, EXCEPT

WITH THE CONSENT OF THE EMPLOYER, ALTER ANY TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES,

(A) UNTIL THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR UNDER THIS ACT AND,

(I) SEVEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES THE REPORT OF A CONCILIATION BOARD OR MEDIATOR, OR

(II) FOURTEEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE THAT HE DOES NOT CONSIDER IT ADVISABLE TO APPOINT A CONCILIATION BOARD,

AS THE CASE MAY BE; OR

(B) UNTIL THE RIGHT OF THE TRADE UNION TO REPRESENT THE EMPLOYEES HAS BEEN TERMINATED,

WHICHEVER OCCURS FIRST.

(2) WHERE A TRADE UNION HAS APPLIED FOR CERTIFICATION AND NOTICE THEREOF FROM THE BOARD HAS BEEN RECEIVED BY THE EMPLOYER, NO EMPLOYER SHALL, EXCEPT WITH THE CONSENT OF THE TRADE UNION, ALTER THE RIGHTS, PRIVILEGES OR DUTY OF THE EMPLOYER OR THE EMPLOYEES UNTIL,

(A) THE TRADE UNION HAS GIVEN NOTICE UNDER SECTION 13, IN WHICH CASE SUBSECTION 1 APPLIES; OR

(B) THE APPLICATION FOR CERTIFICATION BY THE TRADE UNION IS DISMISSED OR TERMINATED BY THE BOARD, OR WITHDRAWN BY THE TRADE UNION.

3. THE COMPLAINANT APPLIED TO THE ONTARIO LABOUR RELATIONS BOARD FOR CERTIFICATION AS BARGAINING AGENT FOR A BARGAINING UNIT WHICH INCLUDED MR. KHODADEEN, ON OR ABOUT FEBRUARY 16, 1971. FOR REASONS NOT HERE RELEVANT, THE PROCEEDINGS IN THAT APPLICATION WERE ADJOURNED SINE DIE.

4. MR. KHODADEEN HAS BEEN EMPLOYED BY THE RESPONDENT SINCE FEBRUARY 17, 1969 AS A TECHNOLOGIST. HE STATED THAT AT THE TIME HE WAS HIRED HE HAD AN INTERVIEW WITH SISTER EDWARD WHO WAS THE MANAGER

OF THE LABORATORY. HIS EVIDENCE WAS THAT HE WAS TOLD BY SISTER EDWARD THAT HE WOULD GET AN ANNIVERSARY INCREASE MOVING HIM TOWARDS THE TOP OF HIS WAGE RANGE. HE STATED THAT HE WAS ALSO TOLD THAT IN ADDITION TO THE FOREGOING INCREMENT HE WOULD GET A COST OF LIVING INCREASE AT THE START OF EACH YEAR. HE RECEIVED THE LATTER TYPE OF INCREASE IN 1970 AND 1971. THE EFFECTIVE DATE OF 1971 INCREASE WAS JANUARY 10TH.

5. MR. KHODADEEN ALSO IDENTIFIED THE APPLICATION FOR EMPLOYMENT FORM WHICH HE SIGNED IN THE PERSONNEL OFFICE AT THE TIME HE WAS ENGAGED BY THE RESPONDENT. THE FIRST PORTION OF THE APPLICATION FORM REQUIRES THE TYPE OF INFORMATION GENERALLY SOUGHT IN SUCH DOCUMENTS AND IT IS SIGNED BY THE APPLICANT. THE SECOND PORTION OF THE FORM, HOWEVER, BEARS THE FOLLOWING HEADING;

HEREUNDER, THE WORKING CONDITIONS
ON WHICH WE HAVE AGREED THIS 18 DAY OF
THE MONTH OF FEV. 1969

BENEATH THE HEADING ARE SET OUT TWELVE ITEMS WHICH DEAL WITH SUCH THINGS AS HOURS OF WORK, SALARY, HOLIDAYS, SICK LEAVE, GROUP INSURANCE. THE ITEMS ARE NUMBERED 1 TO 12. ITEM NO. 4 DEALS WITH SALARY INCREASES. WRITTEN OPPOSITE TO ITEM 4 ARE THE WORDS "ACC. TO THE SCALE". THERE IS NO OTHER REFERENCE TO A SALARY INCREASE ON THE FORM. THIS PORTION OF THE DOCUMENT IS SIGNED BY MR. KHODADEEN AND BY A REPRESENTATIVE OF THE DIRECTOR OF INDUSTRIAL RELATIONS.

6. THE COMPLAINT, INSOFAR AS MR. KHODADEEN IS CONCERNED, RELATES ONLY TO THE COST OF LIVING INCREASE AND NOT TO THE ANNUAL INCREMENT WITHIN THE WAGE RANGE FOR HIS CLASSIFICATION. THE REASON FOR THIS BEING THAT HE HAD REACHED THE TOP OF THE RANGE OF THE JOB FOR WHICH HE WAS HIRED. HE WAS THEN PROMOTED TO THE TOP OF THE RANGE OF THE NEW JOB. THE COMPLAINT IS THEREFORE LIMITED, AS INDICATED ABOVE, TO THE ALLEGATION THAT THE RESPONDENT HAS FAILED TO PAY A COST OF LIVING INCREASE SIMILAR TO THE INCREASES RECEIVED BY KHODADEEN IN 1970 AND 1971 TO WHICH HE ALLEGES HE IS ENTITLED.

7. THERE WAS EVIDENCE THAT EMPLOYEES IN THE BARGAINING UNIT ATTENDED MEETINGS WHICH WERE ATTENDED BY DR. HILL, THE ASSOCIATE DIRECTOR OF THE LABORATORY, AROUND FEBRUARY 1972. AT THESE MEETINGS DR. HILL MADE CERTAIN STATEMENTS TO THE EMPLOYEES CONCERNING THE ANNUAL INCREMENTS AND THE APPLICATION FOR CERTIFICATION.

8. KHODADEEN STATED THAT DR. HILL GAVE THE EMPLOYEES TO UNDERSTAND THAT THERE WOULD BE NO INCREASE BECAUSE OF THE APPLICATION. HE STATED ALSO THAT DR. HILL SAID THAT THE MONEY TO COVER THE INCREASE

WAS THERE BUT THAT NO DECISION HAD BEEN REACHED ABOUT, IF AND WHEN, IT WOULD BE PAID. ACCORDING TO KHODADEEN THE PRESENT UNDERSTANDING IS THAT NO DECISION HAS BEEN REACHED ABOUT PAYMENT OF INCREASES.

9. LORRAINE HOWARD, A WITNESS CALLED BY THE COMPLAINANT, IS A TECHNOLOGIST IN THE MEDICAL LABORATORY. HER VERSION OF THE STATEMENTS MADE BY DR. HILL ARE TO THE EFFECT THAT THE DOCTOR SAID THERE WOULD BE NO INCREASE DUE TO THE APPLICATION FOR CERTIFICATION - THAT THE HOSPITAL WAS WAITING TO SEE WHAT WENT ON WITH RESPECT TO THE APPLICATION. SHE ALSO TESTIFIED THAT THE DOCTOR HAD SAID THAT THE MONEY WAS THERE BUT THAT HE DID NOT KNOW WHEN IT WAS TO BE GIVEN TO THE EMPLOYEES CONCERNED BECAUSE OF THE CERTIFICATION PROCEEDINGS. SHE REITERATED KHODADEEN'S EVIDENCE THAT THE DOCTOR HAD SAID THAT THE MONEY WAS THERE BUT NO DECISION HAD BEEN MADE.

10. MISS HOWARD TESTIFIED THAT SHE WAS ALSO INTERVIEWED BY SISTER EDWARD PRIOR TO SIGNING AN APPLICATION FORM. SHE SAID THAT SISTER EDWARD HAD TOLD HER THAT SHE MIGHT EXPECT AN ANNUAL COST OF LIVING INCREASE. SHE SIGNED AN APPLICATION FOR EMPLOYMENT FORM SIMILAR TO THAT SIGNED BY THE OTHER WITNESS.

11. IT WAS THE POSITION OF THE RESPONDENT THAT SECTION 70(2) OF THE ACT DOES NOT REFER TO WAGES AS DOES SECTION 70(1) OF THE ACT AND THAT THAT BEING SO, SUBSECTION (2) HAS NO APPLICATION TO THE PRESENT CIRCUMSTANCES WHERE WAGES ARE THE SUBJECT OF THE COMPLAINT. IT CONTENDS THAT IF THE LEGISLATION HAD INTENDED TO INCLUDE WAGES IN SUBSECTION (2) IT WOULD HAVE DONE SO, SPECIFICALLY AS IT DID IN SUBSECTION (1). THE RESPONDENT ALSO ARGUED THAT, IN ANY EVENT, KHODADEEN DID NOT HAVE A RIGHT TO THE INCREASE IN QUESTION SO THAT THE FAILURE TO PAY COULD NOT AMOUNT TO AN ALTERATION OF A RIGHT UNDER SECTION 70(2).

12. THE COMPLAINANT, ON THE OTHER HAND, CONTENDS THAT THE WORDS "THE RIGHTS, PRIVILEGES OR DUTY" USED IN SUBSECTION (2) ARE WIDE ENOUGH IN THEIR SCOPE TO INCLUDE THE SUBJECT OF WAGES.

13. IN SUPPORT OF ITS CONTENTION, THE COMPLAINANT ALSO RELIES UPON SUBSECTION (1). THE ARGUMENT IS THAT RATES OF WAGES AND OTHER CONDITIONS OF EMPLOYMENT ARE INCLUDED IN THE WORDS "RIGHTS AND DUTIES" AND THAT "ANY" MUST BE READ AS "ANY OTHER" SO THAT THE SUBSECTION SHOULD BE READ AS DEALING WITH THE RATES OF WAGES OR ANY OTHER CONDITION OF EMPLOYMENT OR "ANY OTHER" RIGHT, PRIVILEGE OR DUTY ETC. ETC.

14. IT IS READILY APPARENT THAT THE LEGISLATION IN SECTION 70(1) WAS ATTEMPTING TO ENSURE THE MAINTENANCE OF THE STATUS QUO ANTE THE TIME THE NOTICE REFERRED TO IN THE SUBSECTION WERE GIVEN

AND TO PRESERVE THAT CONDITION UNTIL THE HAPPENING OF THE EVENTS SET OUT THEREIN. TO ACCOMPLISH THIS END THE BROADEST LANGUAGE IS EMPLOYED, AND IN OUR OPINION, THE USE OF THE WORDS "OR ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER ETC. ETC." ARE OBVIOUSLY DESIGNED TO BLANKET EVERY ASPECT OF THE RELATIONSHIP BETWEEN EMPLOYER, EMPLOYEE AND THE TRADE UNION, INCLUDING THE SPECIFIC REFERENCE TO RATES OF WAGES AND THE MORE GENERAL ALLUSION TO OTHER CONDITIONS OF EMPLOYMENT CONTAINED IN THE SUBSECTION.

15. IN VIEW OF THE FOREGOING, THE BOARD FINDS THAT THE WORDS "RIGHTS, PRIVILEGES AND DUTY" APPEARING IN SUBSECTION (2) OF SECTION 70 MUST BE READ AS HAVING THE SAME BROAD INCLUSIVE SWEEP AS THEY HAVE WHEN THEY ARE USED IN SUBSECTION (1). THE USE OF THE DEFINITE ARTICLE IN THE SECOND SUBSECTION IN PLACE OF THE WORD "ANY" IN THE FIRST SUBSECTION LENDS SUPPORT TO THE CONCLUSION WE HAVE REACHED AS TO THE ALL INCLUSIVE NATURE OF THE WORDS "RIGHTS, PRIVILEGE OR DUTY". IN ANY EVENT, IT IS BEYOND DISPUTE THAT THE WORD "RIGHT" WHEN USED IN THE CONTEXT OF EMPLOYER EMPLOYEE RELATIONSHIPS MUST INCLUDE RIGHTS RELATIVE TO WAGES.

16. THE QUESTION NOW ARISES AS TO WHETHER IN FACT KHODADEEN HAD A RIGHT TO THE INCREASE AND CONSEQUENTLY WHETHER THE FAILURE TO GIVE THE INCREASE AMOUNTS TO AN ALTERATION OF A RIGHT WITHIN THE MEANING OF SECTION 70(2). COUNSEL FOR THE COMPLAINANT ARGUED THAT THE RIGHTS REFERRED TO IN THE ACT ARE NOT MORAL RIGHTS OR STATUTE RIGHTS BUT ARE RIGHTS ARISING OUT OF THE CONTRACT OF EMPLOYMENT.

17. THIS BRINGS US BACK TO A CONSIDERATION OF THAT PORTION OF THE APPLICATION FORM DEALING WITH THE WORKING CONDITIONS UPON WHICH THE WITNESS AND THE HOSPITAL AGREED ON THE DATE OF KHODADEEN'S EMPLOYMENT. IT IS CLEAR FROM AN EXAMINATION OF THIS DOCUMENT THAT THE ONLY REFERENCE MADE TO THE SALARY INCREASE IS THAT CONTAINED IN ITEM 4 OF THE WORKING CONDITIONS. THE INCREASE REFERRED TO THEREIN IS, AS THE DOCUMENT EXPRESSES IT, AN INCREASE ACCORDING TO THE SCALE. THE WITNESS TESTIFIED THAT HE HAD RECEIVED THIS TYPE OF SALARY INCREASE UNTIL ATTAINING THE TOP OF SCALE.

18. THE FACT IS THAT THE WORKING CONDITIONS UNDER WHICH KHODADEEN WAS EMPLOYED WERE SET OUT IN A WRITTEN CONTRACT OF EMPLOYMENT SIGNED BY BOTH PARTIES. THE BOARD IS OF THE OPINION THAT IT THEREFORE CANNOT ENTERTAIN THE EXTRINSIC EVIDENCE RELATING TO SISTER EDWARD AND THE PREVIOUS PAYMENTS. IN VIEW OF THE FACT THAT THE CONTRACT STIPULATES THE PAYMENT OF ONLY ONE FORM OF SALARY INCREASE AND THE EVIDENCE IS THAT THAT HAS BEEN PAID WHEN DUE, WE CANNOT FIND THAT KHODADEEN OR ANY OTHER EMPLOYEE WHO HAS SIGNED A SIMILAR AGREEMENT HAS A RIGHT TO A COST OF LIVING INCREASE WHICH IS NOT PROVIDED FOR IN THE CONTRACT.

19. IT FOLLOWS, IN VIEW OF THE FOREGOING, THAT THERE HAS BEEN NO VIOLATION OF SECTION 70(2) OF THE ACT ON THE PART OF THE RESPONDENT AND THE APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: JUNE 30, 1972.

THE EVIDENCE IN THIS MATTER IS SET OUT IN THE DECISION OF THE MAJORITY.

I JOIN WITH THE REASONING AND CONCLUSION OF THE MAJORITY IN FINDING THAT THE WORDS "RIGHTS, PRIVILEGES AND DUTY" APPEARING IN SECTION 70(2) OF THE LABOUR RELATIONS ACT MUST BE READ AS HAVING THE SAME BROAD INCLUSIVE SWEEP AS THEY HAVE WHEN THEY ARE USED IN SECTION 70(1) OF THE ACT, AND THAT THE WORD "RIGHT" WHEN USED IN THE CONTEXT OF EMPLOYER-EMPLOYEE RELATIONSHIPS INCLUDES RIGHTS RELATIVE TO WAGES.

BASED ON THE EVIDENCE IN THIS CASE AS OUTLINED PARTICULARLY IN PARAGRAPHS 4, 7, 8, 9 AND 10 OF THE MAJORITY DECISION, I FIND THAT THE RESPONDENT VIOLATED SECTION 70(2) OF THE ACT AND I WOULD ORDER THE RESPONDENT TO PAY TO J. A. KHODADEEN THE COST OF LIVING INCREASE FOR 1972.

CASE LISTINGS JUNE 1972

	PAGE
1. CERTIFICATION	
(A) BARGAINING AGENTS CERTIFIED	135
(B) APPLICATIONS DISMISSED	152
(C) APPLICATIONS WITHDRAWN	158
2. APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	159
3. APPLICATION FOR DECLARATION OF SUCCESSOR STATUS	160
4. APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL	160
5. APPLICATIONS FOR CONSENT TO PROSECUTE	160
6. COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)	162
7. APPLICATION UNDER SECTION 37(3) (FOR- MERLY S. 34(3))	163
8. APPLICATIONS UNDER SECTION 39 (FORMERLY S. 35(A))	163
9. JURISDICTIONAL DISPUTES	164
10. REFERENCE TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)	164
11. APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	164

(SEE DECISION [1972] OLRB REP. 483).

18768-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. THE GREATER NIAGARA GENERAL HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER). (REQUEST DENIED).

(SEE DECISION [1972] OLRB REP. 544).

18769-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. OSHAWA GENERAL HOSPITAL (RESPONDENT) V. THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (INTERVENER). (REQUEST DENIED).

18770-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. NIAGARA LABORATORIES, DIVISION OF MEDICAL DATA SCIENCES LIMITED (RESPONDENT). (REQUEST DENIED).

18771-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. THE HAMILTON HEALTH ASSOCIATION (RESPONDENT). (REQUEST DENIED).

18772-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. THE HAMILTON HEALTH ASSOCIATION (RESPONDENT). (REQUEST DENIED).

1497-71-R: INSURANCE EMPLOYEES UNION, LOCAL 1668, C.L.C. (APPLICANT) V. ECONOMICAL MUTUAL INSURANCE COMPANY (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

(FORMERLY S. 65)

1351-71-U: WILLIAM CAMPBELL (COMPLAINANT) V. INTER-CITY TRUCK LINES LIMITED, AND TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION 880 (RESPONDENTS). (REQUEST DENIED).

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JUNE 1972

BARGAINING AGENTS CERTIFIED DURING JUNE

NO VOTE CONDUCTED

17801-70-R: CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) V. ETOBICOKE FORMING LIMITED (RESPONDENT) V. COUNCIL OF CONCRETE-FORMING TRADE UNIONS (INTERVENER #1) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #2).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES, CEMENT MASONS AND CEMENT MASONS' APPRENTICES, CONSTRUCTION LABOURERS AND REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON, IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND YARD EMPLOYEES." (75 EMPLOYEES IN THE UNIT). (HAVING REGARD TO ALL OF THE EVIDENCE BEFORE THE BOARD, TO THE REPRESENTATIONS OF THE PARTIES).

(SEE DECISION [1972] OLRB REP. 664).

18767-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION (RESPONDENT).

UNIT: "ALL MEDICAL LABORATORY TECHNOLOGISTS EMPLOYED IN THE CLINICAL LABORATORY OF THE HOSPITAL OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT CHARGE TECHNOLOGISTS AND PERSONS ABOVE THE RANK OF CHARGE TECHNOLOGIST, PRACTISING MEMBERS OF THE MEDICAL AND NURSING PROFESSION, MEDICAL LABORATORY TECHNOLOGY STUDENTS, LABORATORY ASSISTANTS, LABORATORY AIDES, MORGUE ATTENDANTS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS TEMPORARILY EMPLOYED DURING THE SCHOOL VACATION PERIOD." (38 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE DECISION [1972] OLRB REP. 657).

566-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. SIVI CONSTRUCTION LIMITED (RESPONDENT) V. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 172 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP

OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE DEMOLITION, REPAIR AND CONSTRUCTION OF ROADS AND PARKING LOTS (INCLUDING SIDEWALKS, CURBS AND GUTTERS) SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (14 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

567-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. DINARDO & SONS LTD. (RESPONDENT) V. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 172 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE DEMOLITION, REPAIR AND CONSTRUCTION OF ROADS AND PARKING LOTS (INCLUDING SIDEWALKS, CURBS AND GUTTERS), SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (24 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

568-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. PERFETTI BROTHERS CONSTRUCTION COMPANY LIMITED (RESPONDENT) V. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 172 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE DEMOLITION, REPAIR AND CONSTRUCTION OF ROADS AND PARKING LOTS (INCLUDING SIDEWALKS, CURBS AND GUTTERS) SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (13 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

570-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. PANZA BROS. CONTRACTORS (RESPONDENT) V. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 172 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE DEMOLITION, REPAIR AND CONSTRUCTION OF ROADS AND PARKING LOTS

(INCLUDING SIDEWALKS, CURBS AND GUTTERS), SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (16 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1577-71-R: ONTARIO HOUSING CORPORATION EMPLOYEES LOCAL 767, CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. DEL ZOTTO PROPERTY MANAGEMENT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN CLEANING OPERATIONS AT GLEN PARK APARTMENTS, AT THORNHILL SAVE AND EXCEPT THE PROPERTY MANAGER, PERSONS ABOVE THE RANK OF PROPERTY MANAGER, AND OFFICE STAFF." (91 EMPLOYEES IN THE UNIT).

(SEE DECISION [1972] OLRB REP. 637).

1598-71-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA AFL CIO CLC (APPLICANT) V. MANSFIELD-DENMAN GENERAL COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT ITS TIRE DIVISION PLANT OFFICE AT BARRIE, SAVE AND EXCEPT ASSISTANT DEPARTMENT MANAGERS AND SUPERVISORS, PERSONS ABOVE THE RANK OF ASSISTANT DEPARTMENT MANAGER OR SUPERVISOR, SECRETARY TO THE PRESIDENT, SECRETARIAL ASSISTANT TO THE PRESIDENT, SECRETARY TO THE CONTROLLER, SECRETARY TO THE PLANT MANAGER AND CHIEF ENGINEER, SECRETARY TO THE MANAGER OF INDUSTRIAL ENGINEERING, SECRETARY TO THE PRODUCTION SUPERINTENDENT, SECRETARY TO THE TECHNICAL DIRECTOR, PERSONS EMPLOYED IN THE PERSONNEL DEPARTMENT, CHIEF CHEMIST, COMPOUNDER, SENIOR TECHNICIAN, TECHNICAL SERVICES; SENIOR TECHNICIAN PASSENGER AND COMMERCIAL; SENIOR TECHNICIAN HEAVY DUTY; PROFESSIONAL ENGINEERS EMPLOYED IN A PROFESSIONAL CAPACITY, SALES REPRESENTATIVES, PURCHASING AGENT, ASSISTANT PURCHASING AGENT, TIME STUDY TECHNICIANS, SYSTEMS ANALYST, SECURITY GUARDS AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (66 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1666-71-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE S.E.I.U., A.F. of L., C.I.O., C.L.C. (APPLICANT) V. DEL ZOTTO PROPERTY MANAGEMENT (RESPONDENT).

UNIT: "ALL CLEANERS EMPLOYED BY THE RESPONDENT AT YORK CONDOMINIUM CORPORATION No. 42, 330 DIXON ROAD, IN METROPOLITAN TORONTO, SAVE AND EXCEPT RESIDENT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF RESIDENT SUPERINTENDENT AND OFFICE STAFF." (83 EMPLOYEES IN THE UNIT).

(SEE DECISION [1972] OLRB REP. 640).

1727-71-R: CANADIAN TEXTILE & CHEMICAL UNION (APPLICANT) V. PURETEX KNITTING CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (220 EMPLOYEES IN THE UNIT).

(SEE DECISION [1972] OLRB REP. 676).

1797-71-R: CANADIAN FOOD AND ALLIED WORKERS, LOCAL UNION 175 CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. SUN PARLOUR GREENHOUSE GROWERS CO-OPERATIVE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF MERSEA, SAVE AND EXCEPT THE PLANT MANAGER AND PERSONS ABOVE THE RANK OF PLANT MANAGER, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

1806-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF GOVERNORS RYERSON POLYTECHNICAL INSTITUTE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS LIBRARIES IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES IN THE UNIT).

(SEE DECISION [1972] OLRB REP. 651).

1810-72-R: GENERAL TRUCK DRIVERS' LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. SERVACAR LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE IMPERIAL CENTRE, ON HIGHWAY 401 AT NEWCASTLE, SAVE AND EXCEPT DRIVEWAY SUPERVISORS, PERSONS ABOVE THE RANK OF DRIVEWAY SUPERVISOR, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (21 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1842-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF FORT ERIE (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN THE

TOWN OF FORT ERIE, SAVE AND EXCEPT CLERK, DEPUTY CLERK, TREASURER, DEPUTY TREASURER/OFFICE MANAGER, SECRETARY TO THE CLERK, SECRETARY TO THE MAYOR, COMMISSIONER OF BUILDINGS AND PLANNING, RECREATION DIRECTOR, ASSISTANT RECREATION DIRECTOR, ROAD SUPERINTENDENT, ROAD FOREMAN, ASSISTANT FOREMAN, FOREMAN, WORKS SUPERINTENDENT, ASSISTANT WORKS SUPERINTENDENT, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND ON A COOPERATIVE TRAINING BASIS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 714 EFFECTIVE APRIL 2, 1970." (35 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE CIRCUMSTANCES OF THIS APPLICATION AND TO THE AGREEMENT OF THE PARTIES).

1858-72-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS - AFL, CIO, CLC (APPLICANT) V. FPE-PIONEER ELECTRIC LIMITED (RESPONDENT) V. DRAFTSMEN ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A. F. OF L. - C. I. O., C. L. C. (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL DRAFTSMEN AND APPRENTICE DRAFTSMEN EMPLOYED BY THE RESPONDENT AT BRAMALEA, SAVE AND EXCEPT GROUP LEADERS AND PERSONS ABOVE THE RANK OF GROUP LEADER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (49 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

(SEE DECISION [1972] OLRB REP. 599).

1877-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. SISTERS OF ST. JOSEPH, DIOCESE OF PETERBOROUGH OPERATING ST. JOSEPH'S HOSPITAL, PARRY SOUND (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL LAY EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL AT PARRY SOUND, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, HEREINAFTER REFERRED TO AS BARGAINING UNIT #1." (50 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, MEDICAL TECHNOLOGISTS, LABORATORY TECHNICIANS AND X-RAY TECHNICIANS.).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

1886-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CHILDREN'S AID SOCIETY OF THE CITY OF ST. THOMAS AND THE COUNTY OF ELGIN (RESPONDENT).

UNIT: "ALL SOCIAL WORKERS IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (12 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1896-72-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. KEYES SUPPLY CO. LTD. (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT OFFICE SUPERVISOR, PERSONS ABOVE THE RANK OF OFFICE SUPERVISOR, OUTSIDE SALESMEN, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1901-72-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. AMIK ASSOCIATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF KENORA, SAVE AND EXCEPT EXECUTIVE DIRECTOR AND PERSONS ABOVE THE RANK OF EXECUTIVE DIRECTOR." (6 EMPLOYEES IN THE UNIT).

1927-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CHILDREN'S AID SOCIETY OF THE CITY OF ST. THOMAS AND THE COUNTY OF ELGIN (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL WORKERS EMPLOYED BY THE RESPONDENT AT ST. THOMAS, SAVE AND EXCEPT OFFICE MANAGER AND PERSONS ABOVE THE RANK OF OFFICE MANAGER." (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1930-72-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. BLUE & WHITE SERVICES DIVISION OF STERICLOTH PRODUCTS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN HAMILTON, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, SUPERVISORS, SALES AND OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (28 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1933-72-R: THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) V. PRECISION SPRING OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KINGSVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (50 EMPLOYEES IN THE UNIT).

1934-72-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. SCOTT'S RESTAURANTS CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS CHICKEN COMMISSARY PLANT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (35 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

1941-72-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. BREWERS' WAREHOUSING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS DISTRICT OFFICE AND ITS GROUP OFFICE AT HAMILTON, SAVE AND EXCEPT OFFICE MANAGER, FOREMAN OR MANAGER AND PERSONS ABOVE THE RANK OF FOREMAN OR MANAGER, THE SECRETARY TO THE DISTRICT MANAGER AND THE SECRETARY TO THE GROUP MANAGER." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1953-72-R: INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (APPLICANT) V. HOLIDAY INN OF OSHAWA OF THE COMMONWEALTH HOLIDAY INNS OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS INN IN OSHAWA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, (INCLUDING FRONT DESK CLERKS, FRONT DESK CASHIERS, PAYROLL CLERKS ACCOUNTING CLERKS, AUDIT DEPARTMENT STAFF, SECRETARIES), SECURITY STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (130 EMPLOYEES IN THE UNIT).

1962-72-R: AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F. OF L. - C.I.O., C.L.C. (APPLICANT) V. CANADIAN NON-DESTRUCTIVE TESTING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN AND OUT OF METROPO-

LITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

1964-72-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1730 (APPLICANT) V. SIOUX LOOKOUT HYDRO ELECTRIC COMMISSION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SIOUX LOOKOUT, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONFIDENTIAL SECRETARIES, OFFICE AND CLERICAL STAFF, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1981-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. RED-D-MIX CONCRETE COMPANY (DIVISION OF) S.P. & M. MATERIALS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN OR OUT OF STRATHROY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

1989-72-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 71 (APPLICANT) V. VOLCANO LIMITED (LIMITEE) (RESPONDENT).

UNIT: "ALL BURNER MECHANICS AND APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN ITS OFFICE AT OTTAWA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2004-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 93 (APPLICANT) V. PETRIFOND FOUNDATION COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #1) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (INTERVENER #2).

UNIT: "ALL PILE DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERVENER #1 MADE ON APRIL 30, 1969 AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERVENER #2 EFFECTIVE FROM MAY 1, 1969." (4 EMPLOYEES IN THE UNIT).

(SEE DECISION [1972] OLRB REP. 586).

2007-72-R: TEAMSTERS LOCAL UNION No. 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DUFFERIN MATERIALS & CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, EMPLOYED AS MECHANICS, MECHANICS HELPERS AND WELDERS SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, EMPLOYEES COVERED BY SUBSISTING COLLECTIVE AGREEMENTS, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2021-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1036 (APPLICANT) V. CHAMPLAIN FOREST PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BLIND RIVER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF," (30 EMPLOYEES IN THE UNIT).

2030-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. BETTER IRON WORKS LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

2037-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. PETER'S WELDING CO. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2038-72-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (APPLICANT) V. F.A. TUCKER (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

2039-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 786 (APPLICANT) V. MACON EQUIPMENT RENTALS LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

2041-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. RED-D-MIX CONCRETE COMPANY (DIVISION OF) S.P. & M. MATERIALS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DELHI, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

2042-72-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS TEAMSTERS LOCAL UNION No. 230, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. R. V. K. READY MIX LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, BATCHER-DISPATCHER, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (14 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2049-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. JOHN BRICK AND BLOCK (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

2055-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL #2307 (APPLICANT) V. CASEY HEWSON CONTRACTORS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLEN-GARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

2058-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
(APPLICANT) V. MINAKI MARINA (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2059-72-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
(APPLICANT) V. COLLAVINO BROTHERS CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

2064-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA
(APPLICANT) V. CADET CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

2065-72-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION
No. 597 (APPLICANT) V. CADET CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

2066-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
(APPLICANT) V. CAMPEAU CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2067-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. NOR-PIPE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIPS OF FIELD, BASTEDO, McLAREN, THISTLE, SISK AND McCALLUM AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO (EXCEPT THAT AREA ENCOMPASSED WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY POST OFFICE) ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (45 EMPLOYEES IN THE UNIT).

(SEE DECISION [1972] OLRB REP. 604).

2076-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. TEMAR CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

2102-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1036
(APPLICANT) V. GENAN CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THAT PORTION OF THE DISTRICT OF ALGOMA SOUTH OF THE 49TH PARALLEL OF LATITUDE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

2120-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL NO. 786 (APPLICANT) V. SAMSON CONSTRUCTION (1972) LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THAT PORTION OF THE DISTRICT OF ALGOMA SOUTH OF THE 49TH PARALLEL OF LATITUDE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2133-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837
(APPLICANT) V. ART LABORATORY FURNITURE LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2134-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. COLLAVINO BROTHERS CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2152-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. MARTIN-STEWART CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

1779-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. ATOMIK CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAWKESBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (19 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	25
NUMBER OF PERSONS WHO CAST BALLOTS	25
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	14
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	11

(SEE DECISION [1972] OLRB REP. 605).

1857-72-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT)
V. TEMPLETON SUR-LOK LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYERS OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (53 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		56
NUMBER OF PERSONS WHO CAST BALLOTS		56
BALLOTS SEGREGATED AND NOT COUNTED	3	
NUMBER OF SPOILED BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	46	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	4	

1897-72-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT)
V. GRANDVIEW INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS ENGAGED IN A COOPERATIVE PROGRAM BETWEEN THE RESPONDENT AND A UNIVERSITY OR COLLEGE, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES.).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		13
NUMBER OF PERSONS WHO CAST BALLOTS		8
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	5	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	3	

(SEE DECISION [1972] OLRB REP. 569).

1995-72-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. DANWAY INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, INSTALLERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION." (57 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		69
NUMBER OF PERSONS WHO CAST BALLOTS		63
NUMBER OF SPOILED BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	36	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	23	

2013-72-R: LOCAL UNION 2557 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. PINECREST PRODUCTS LIMITED (RESPONDENT) V. LOCAL 2-278 INTERNATIONAL WOODWORKERS OF AMERICA (INCUMBENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MIDLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (26 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		24
NUMBER OF PERSONS WHO CAST BALLOTS		23
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	18	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5	

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

1526-71-R: THE UNITED SHOE WORKERS OF AMERICA AFL CIO CLC (APPLICANT) V. DOMINI SHOE PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALE STAFF." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		9
NUMBER OF PERSONS WHO CAST BALLOTS		6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	2	

(SEE DECISION [1972] OLRB REP. 590).

1710-71-R: INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (APPLICANT) V. ANSON GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISOR, CHIEF ENGINEER, OFFICE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT DATED MAY 7, 1970 ENTERED INTO BETWEEN THE APPLICANT AND THE RESPONDENT." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

1877-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. SISTERS OF ST. JOSEPH, DIOCESE OF PETERBOROUGH OPERATING ST. JOSEPH'S HOSPITAL, PARRY SOUND (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #2: "ALL LAY EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL AT PARRY SOUND EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, OFFICE AND CLERICAL STAFF." (11 EMPLOYEES IN THE UNIT). (THE BOARD FURTHER STATED IN ITS DECISION DATED MAY 30TH, 1972: "... THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, MEDICAL TECHNOLOGISTS, LABORATORY TECHNICIANS AND X-RAY TECHNICIANS.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	16
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

1880-72-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. VICTORIA HOSPITAL BOARD OF TRUSTEES OF THE CITY OF LONDON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF VICTORIA HOSPITAL AT LONDON, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSES, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, UNDERGRADUATE DIETITIANS, PERSONS ENGAGED IN RESEARCH WORK, SOCIAL WORKERS, TECHNICAL PERSONNEL, CHIEF ENGINEER, ASSISTANT CHIEF ENGINEER, RESIDENCE DIRECTOR, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE AND CLERICAL STAFF, SECURITY GUARDS, PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN VICTORIA HOSPITAL AND LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220 DATED 18TH DAY OF NOVEMBER 1971, PERSONS COVERED BY THE CERTIFICATE ISSUED BY THE ONTARIO LABOUR RELATIONS BOARD TO THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.), STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (276 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		264
NUMBER OF PERSONS WHO CAST BALLOTS		174
BALLOTS SEGREGATED AND NOT COUNTED	3	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	122	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	49	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JUNE

NO VOTE CONDUCTED

966-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. GABCO LIMITED (RESPONDENT). (18 EMPLOYEES).

1253-71-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. PIGOTT CONSTRUCTION COMPANY LIMITED (RESPONDENT) V. A PROVINCIAL COUNCIL OF CONSTRUCTION UNIONS (INTERVENER). (15 EMPLOYEES).

(SEE DECISION [1972] OLRB REP. 565).

1347-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ST. JOSEPH'S HOSPITAL, HAMILTON (RESPONDENT) V. CSAO NATIONAL (INC.) (INTERVENER). (25 EMPLOYEES).

(SEE DECISION [1972] OLRB REP. 578).

1632-71-R: DIAMOND "Z" ASSOCIATION (APPLICANT) V. ZEHR'S MARKETS LIMITED (RESPONDENT) V. CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (INTERVENER #1) V. CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 633, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (INTERVENER #2) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #3). (1002 EMPLOYEES).

(SEE DECISION [1972] OLRB REP. 635).

1694-71-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) V. BARON HOTELS, SUDBURY LIMITED (RESPONDENT). (13 EMPLOYEES).

(SEE DECISION [1972] OLRB REP. 573).

1709-71-R: CANADIAN ASSOCIATION OF SPECIALIST EMPLOYEES ASSOCIATION CANADIENNE DES EMPLOYÉS - SPÉCIALISTES (APPLICANT) V. UNION OF NATIONAL DEFENCE EMPLOYEES UNION DES EMPLOYÉS DE LA DÉFENSE NATIONALE (RESPONDENT). (14 EMPLOYEES).

1739-71-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. AMCO PRODUCTS (CANADA) LTD. (RESPONDENT). (33 EMPLOYEES).

1784-71-R: CANADIAN UNION OF GENERAL EMPLOYEES (C.U.G.E.) (APPLICANT) V. CONSOLIDATED BUILDING MAINTENANCE COMPANY, DIVISION OF CONSOLIDATED MAINTENANCE SERVICES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE T. EATON CO. LTD. AT 190 YONGE STREET IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, AND THOSE ABOVE THE RANK OF FOREMAN AND SUPERVISOR AND OFFICE STAFF." (177 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS EMPLOYED AT THE T. EATON CO. LTD. STORE AT COLLEGE AND YONGE STREETS ARE INCLUDED IN THE BARGAINING UNIT.).

1940-72-R: ASSOCIATION OF NURSES ST. JOSEPH'S HOSPITAL LONDON (APPLICANT) V. THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON, IN ONTARIO (RESPONDENT). (93 EMPLOYEES).

(SEE DECISION [1972] OLRB REP. 661).

1952-72-R: CANADIAN UNION OF GENERAL EMPLOYEES (C.U.G.E.) (APPLICANT) V. CONSOLIDATED BUILDING MAINTENANCE COMPANY, DIVISION OF CONSOLIDATED MAINTENANCE SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE T. EATON CO. LTD. AT ITS DON MILLS, SHERWAY GARDENS, SHOPPER'S WORLD AND YORKDALE SHOPPING CENTRE STORES IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, AND THOSE ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION." (46 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1975-72-R: PATTERN MAKERS' ASSOCIATION OF HAMILTON & VICINITY, AFFILIATE OF PATTERN MAKERS' LEAGUE OF NORTH AMERICA (APPLICANT) V. GRIMSBY CUSTOM TOOLING LIMITED (RESPONDENT) V. EMPLOYEES (OBJECTORS). (2 EMPLOYEES).

1983-72-R: HOTEL, MOTEL AND RESTAURANT EMPLOYEES AND BEVERAGE DISPENSERS' UNION, LOCAL 757 (APPLICANT) V. ROYALTON HOTEL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (3 EMPLOYEES).

2053-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION #493 (APPLICANT) V. VEGH SONS ENTERPRISES (RESPONDENT) V. EMPLOYEE (OBJECTOR). (11 EMPLOYEES).

2119-72-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 120 (APPLICANT) V. W. H. FUSS ELECTRIC LTD. (RESPONDENT) V. EMPLOYEE (OBJECTOR). (2 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

1876-72-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. GOSSELIN LUMBER COMPANY LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SAWMILL AND PLANING MILL AT CALSTOCK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SCALERS, AND STUDENTS, EMPLOYED DURING THE SCHOOL VACATION PERIOD." (69 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS LIST	68
NUMBER OF PERSONS WHO CAST BALLOTS	68
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	9
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	59

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

1106-71-R: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261, OTTAWA, ONTARIO - AFFILIATED WITH AFL-CIO AND C.L.C. (APPLICANT) V. OTTAWA CIVIL SERVICE RECREATIONAL ASSOCIATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE CATERING DIVISION EXCLUSIVE, SAVE AND EXCEPT MANAGER, STEWARDS, OFFICE STAFF, SWIMMING POOL ATTENDANTS, BOWLING LANE ATTENDANT AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (63 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	15
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9

1432-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 93 (APPLICANT) V. URBANDALE REALTY CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	9
NUMBER OF PERSONS WHO CAST BALLOTS	9
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7

1650-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1267 (OIL & GAS BURNER TECHNICIANS) (APPLICANT) V. TORONTO HANDICAPPED COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT MANAGER AND PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (34 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		24
NUMBER OF PERSONS WHO CAST BALLOTS	19	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	6	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	13	

1740-71-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF N.A., A.F.L., C.I.O., C.L.C. (APPLICANT) v. PORT COLBORNE POULTRY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN PORT COLBORNE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND OFFICE AND SALES STAFF." (21 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		20
NUMBER OF PERSONS WHO CAST BALLOTS	20	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	8	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	12	

1787-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. PHILLIP CASUCCI CONSTRUCTION LIMITED (RESPONDENT) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL #38 (INTERVENER).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLAND AND THOSE PORTIONS OF HALDIMAND AND LINCOLN COUNTIES LYING SOUTH AND EAST OF THE FOLLOWING DESCRIBED LINE: THE BOUNDARY LINE DIVIDING THE JURISDICTIONAL AREA BETWEEN HAMILTON LOCAL UNION No. 18 AND LOCAL UNION No. 38 SHALL BE THE ROAD KNOWN AS THE CLINTON TOWN LINE, COMMENCING AT THE SHORE OF LAKE ONTARIO AND THENCE IN A SOUTH WESTERLY DIRECTION ALONG SAID CLINTON TOWN LINE PASSING THROUGH THE VILLAGES OF SMITHVILLE AND CANBORO, FROM CANBORO ALONG NUMBER THREE HIGHWAY IN A WESTERLY DIRECTION PASSING THE VILLAGES OF CANFIELD, CAYUGA, DECEWSVILLE, NELLES CORNERS TO BALMORAL, FROM BALMORAL IN A SOUTHERLY DIRECTION ALONG THE ROAD THAT DIVIDES THE TOWNSHIPS OF WALPOLE AND RAINHAM, AND WHICH PASSES THROUGH THE VILLAGE OF SELKIRK RIGHT ON THROUGH TO THE SHORE OF LAKE ERIE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'
LIST

NUMBER OF PERSONS WHO CAST BALLOTS
NUMBER OF BALLOTS MARKED IN FAVOUR
OF APPLICANT

NUMBER OF BALLOTS MARKED IN FAVOUR
OF INTERVENER

3
3
1
2

1805-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. DOMINION CONSTRUCTION CO. (NIAGARA) LIMITED (APPLICANT) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION #38 (INTERVENER).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLAND AND THOSE PORTIONS OF HALDIMAND AND LINCOLN COUNTIES LYING SOUTH AND EAST OF THE FOLLOWING DESCRIBED LINE: THE BOUNDARY LINE DIVIDING THE JURISDICTIONAL AREA BETWEEN HAMILTON LOCAL UNION No. 18 AND LOCAL UNION No. 38 SHALL BE THE ROAD KNOWN AS THE CLINTON TOWN LINE, COMMENCING AT THE SHORE OF LAKE ONTARIO AND THENCE IN A SOUTH WESTERLY DIRECTION ALONG SAID CLINTON TOWN LINE PASSING THROUGH THE VILLAGES OF SMITHVILLE AND CANBORO, FROM CANBORO ALONG NUMBER THREE HIGHWAY IN A WESTERLY DIRECTION PASSING THE VILLAGES OF CANFIELD, GAYUGA, DECEWSVILLE, NELLES CORNERS TO BALMORAL, FROM BALMORAL IN A SOUTH-ERLY DIRECTION ALONG THE ROAD THAT DIVIDES THE TOWNSHIPS OF WALPOLE AND RAINHAM, AND WHICH PASSES THROUGH THE VILLAGE OF SELKIRK RIGHT ON THROUGH TO THE SHORE OF LAKE ERIE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

NUMBER OF PERSONS WHO CAST BALLOTS
NUMBER OF SPOILED BALLOTS
NUMBER OF BALLOTS MARKED IN FAVOUR
OF APPLICANT
NUMBER OF BALLOTS MARKED IN FAVOUR
OF INTERVENER

6
6
1
1
4

1841-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE TIMMINS DISTRICT ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT BUSINESS ADMINISTRATOR AND PERSONS ABOVE THE RANK OF BUSINESS ADMINISTRATOR, TREASURER, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT." (33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		33
NUMBER OF PERSONS WHO CAST BALLOTS	32	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	26	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JUNE

1931-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CITY OF WATERLOO COMMUNITY SERVICE BOARD (RESPONDENT). (17 EMPLOYEES).

1977-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. CONSOLIDATED PLATE GLASS (WESTERN) LTD. (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES GLASS WORKERS UNION LOCAL 1554 WINNIPEG, MANITOBA (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS). (2 EMPLOYEES).

1980-72-R: GENERAL TRUCK DRIVERS, LOCAL 938, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. NORTH BAY TRANSIT SYSTEM (RESPONDENT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 122 (INTERVENER). (16 EMPLOYEES).

1982-72-R: GENERAL TRUCK DRIVERS LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DONLINE HAULAGE (RESPONDENT). (28 EMPLOYEES).

1991-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. RINO ZANETTE LTD. (RESPONDENT) V. LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (INTERVENER). (5 EMPLOYEES).

1994-72-R: LENNOX AND ADDINGTON CUSTODIAN ASSOCIATION (APPLICANT) V. THE LENNOX AND ADDINGTON COUNTY BOARD OF EDUCATION (RESPONDENT). (82 EMPLOYEES).

2014-72-R: INTERNATIONAL BROTHERHOOD OF BOOKBINDERS AND BINDERY WOMEN LOCAL #226 - LONDON, ONTARIO (APPLICANT) V. LONDON PRINTING & LITHOGRAPHING CO. LTD. (RESPONDENT) V. LOCAL 247, LITHOGRAPHERS & PHOTOENGRAVERS INT'L UNION (INTERVENER). (39 EMPLOYEES).

2068-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. AGOSTINO CONTRACTORS LTD. MASONRY OR AGOSTINO MASONRY CONTRACTORS LTD. (RESPONDENT). (2 EMPLOYEES).

2069-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. PROCOR LIMITED (RESPONDENT). (8 EMPLOYEES).

2103-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) V. JOHN KERR CONSTRUCTION LTD. (RESPONDENT). (7 EMPLOYEES).

2122-72-R: LOCAL UNION 1190, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. SARNIA HOISTS LIMITED (DIVISION OF ANTHES-IMPERIAL COMPANY LIMITED) (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #1) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 (INTERVENER #2). (4 EMPLOYEES).

2123-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. CAMPEAU CORPORATION LIMITED (RESPONDENT). (4 EMPLOYEES).

2125-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ALGOMA MAINTENANCE & SERVICES LTD. (RESPONDENT). (7 EMPLOYEES).

2128-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. CAMPEAU CORPORATION LIMITED (RESPONDENT). (2 EMPLOYEES).

2132-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA ONTARIO PROVINCIAL DISTRICT COUNCIL (APPLICANT) V. CAMPEAU CORPORATION LIMITED (RESPONDENT). (4 EMPLOYEES).

2151-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. CAMPEAU CORPORATION LIMITED (RESPONDENT). (6 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING JUNE

1809-72-R: DOMENIC CANACARI AND EMPLOYEES OF ITT LIGHTING FIXTURE DIVISION (APPLICANT) V. LOCAL UNION No. 120 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL CIO CLC (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF ITT LIGHTING FIXTURE DIVISION A DIVISION OF ITT CANADA LIMITED AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (30 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		28
NUMBER OF PERSONS WHO CAST BALLOTS	27	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	6	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	21	

1860-72-R: JANICE COUTLEE (APPLICANT) V. TEAMSTERS LOCAL UNION No. 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (6 EMPLOYEES). (GRANTED).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

JUNE

1604-71-R: LOCAL UNION No. 1788, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

JUNE

2096-72-U: CONSOLIDATED-BATHURST PACKAGING LIMITED (APPLICANT) V. LARRY J. AITKEN, ET AL (RESPONDENTS). (WITHDRAWN).

2097-72-U: CONSOLIDATED-BATHURST PACKAGING LIMITED (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2135 (SUCCESSOR TO LOCAL 2914) (RESPONDENT). (WITHDRAWN).

2153-72-U: NEWTOWN CONSTRUCTION INC. (APPLICANT) V. 1) JAMES DENNY, 2) INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353, 3) NOAH THOMAS PIERCE, 4) GASPARE GULOTTA, 5) DARREL GUY, 6) PETER VERSLIUS, 7) UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBERS AND PIPEFITTING INDUSTRY OF THE UNITED STATES & CANADA, LOCAL 46, 8) INTERNATIONAL LABOURERS UNION OF NORTH AMERICA, LOCAL 506 (RESPONDENTS). (DISMISSED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JUNE

1614-71-U: ANTHONY PITOSCIA AND JOHN THOMPSON (APPLICANTS) V. SEVEN-UP (ONTARIO) LIMITED, I. KEEGAN, PHILLIP CAMPBELL AND DAVID PORTER (RESPONDENTS). (DISMISSED).

1796-71-U: LOCAL UNION 3219 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. THE BOARD OF EDUCATION FOR THE BOROUGH OF NORTH YORK (RESPONDENT). (GRANTED).

(SEE DECISION [1972] OLRB REP. 602).

1850-72-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. T. B. ABBOT, ET AL. (RESPONDENTS). (GRANTED).

(SEE DECISION [1972] OLRB REP. 575).

1863-72-U: ASSOCIATED FREEZERS OF CANADA LIMITED (APPLICANT) V. WAREHOUSEMEN AND MISCELLANEOUS DRIVER LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA AND A. LE FORT (RESPONDENTS). (WITHDRAWN).

1864-72-U: ASSOCIATED FREEZERS OF CANADA LIMITED (APPLICANT) V. GUY BERNIER, RONALD KOWK, AL MORRIS, STANLEY PERRY, CLIFFORD STACEY AND RALPHER STRINGER (RESPONDENT). (WITHDRAWN).

1895-72-U: CANADIAN MERCHANDISING EMPLOYEES' UNION (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT). (WITHDRAWN).

1935-72-U: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. CONSOLIDATED MAINTENANCE SERVICES LIMITED (RESPONDENT). (GRANTED).

1967-72-U: STANLEY-BERRY LIMITED (APPLICANT) V. A. K. STACEY AND OTHERS NAMED ON THE ATTACHED LIST (RESPONDENTS). (WITHDRAWN).

1986-72-U: DONLINE HAULAGE LIMITED (APPLICANT) V. ANTONIO AIELLO, BRUCE BENNETT ET AL AS PER ATTACHED LIST (RESPONDENTS). (WITHDRAWN).

1992-72-U: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 224, OTTAWA, ONTARIO (APPLICANT) V. THE RANGE PRESS LIMITED (RESPONDENT). (WITHDRAWN).

1993-72-U: OTTAWA TYPOGRAPHICAL UNION, LOCAL 102 (APPLICANT) V. THE JOURNAL PUBLISHING COMPANY OF OTTAWA LIMITED (RESPONDENT). (WITHDRAWN).

2019-72-U: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. DU PONT OF CANADA LIMITED, GEORGE ALLEN COCKFIELD, VIVIAN JAMES EASTCOTT, MICHAEL ANDREW NEIL QUIGLEY AND EDWIN C. BURT (RESPONDENTS). (GRANTED).

2023-72-U: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. KAKABEKA TIMBER LIMITED (RESPONDENT). (WITHDRAWN).

2095-72-U: CONSOLIDATED-BATHURST PACKAGING LIMITED (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2914 AND LOCAL 2135, AND EDWARD STEWART, FRANK BLOWING, STEPHEN McNEIL, JOHN MULRONEY, MALCOLM IRVING, ELEANOR DRAKE, ISABEL FOWLER, DONNA MASON AND JO-ANNE MOORE (RESPONDENTS). (WITHDRAWN).

2098-72-U: CONSOLIDATED-BATHURST PACKAGING LIMITED (APPLICANT) V. LARRY J. AITKEN, ET AL (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)

DISPOSED OF DURING JUNE

1340-71-U: NURSES' ASSOCIATION MACASSA LODGE (COMPLAINANT) V. THE CORPORATION OF THE CITY OF HAMILTON (RESPONDENT). (WITHDRAWN).

1615-71-U: JOHN THOMPSON (COMPLAINANT) V. SEVEN-UP (ONTARIO) LIMITED (RESPONDENT). (WITHDRAWN).

1621-71-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. SHERMAN SUPERSONIC INDUSTRIES (CANADA) LIMITED (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 606).

1630-71-U: JACK VAN HOORN (COMPLAINANT) V. UNITED AUTOMOBILE WORKERS, LOCAL 707 (RESPONDENT). (DISMISSED).

1669-71-U: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 204 (COMPLAINANT) V. DELZOTTO PROPERTY MANAGEMENT (RESPONDENT). (WITHDRAWN).

1690-71-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. ACADIAN PLATERS COMPANY LIMITED (RESPONDENT). (DISMISSED).

1704-71-U: CSAO NATIONAL (INC.) (COMPLAINANT) V. OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 630).

1756-71-U: A. J. FERJO (COMPLAINANT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 894, OSHAWA (RESPONDENT). (DISMISSED).

1760-71-U: THOMAS H. BALDOCK (COMPLAINANT) V. TORONTO TYPOGRAPHICAL UNION NO. 91 (RESPONDENT). (GRANTED).

(SEE DECISION [1972] OLRB REP. 580).

1828-72-U: SERVICE EMPLOYEES' UNION, LOCAL 268 (COMPLAINANT) V. GORDON A. MCEACHERN LIMITED (RESPONDENT). (WITHDRAWN).

1902-72-U: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (COMPLAINANT) V. DOMINION GLASS COMPANY LTD. (RESPONDENT). (WITHDRAWN).

1912-72-U: CSAO NATIONAL (INC.) (COMPLAINANT) V. OTTAWA GENERAL HOSPITAL (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 681).

1920-72-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) V. CONSOLIDATED MAINTENANCE SERVICES LIMITED (RESPONDENT). (DISMISSED).

1948-72-U: SERVICE EMPLOYEES UNION, LOCAL 532 (COMPLAINANT) V. UNITED MEDICENTRE OF CANADA LTD. (RESPONDENT). (WITHDRAWN).

1968-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. ELGIN AND ST. THOMAS CHILDREN'S AID SOCIETY (RESPONDENT). (WITHDRAWN).

2008-72-U: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) V. SCOTT'S RESTAURANTS CO. LTD. (CHICKEN COMMISSARY) (RESPONDENT). (WITHDRAWN).

2050-72-U: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1036 (COMPLAINANT) V. CHAMPLAIN FOREST PRODUCTS LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATION UNDER SECTION 37(3) (FORMERLY S. 34(3)) DISPOSED OF DURING

JUNE

1909-72-M: THE GLOBE AND MAIL LIMITED (APPLICANT) V. THE TORONTO PHOTO-ENGRAVERS' UNION, No. 35P, L.P.I.U. (RESPONDENT). (GRANTED).

(SEE DECISION [1972] OLRB REP. 567).

APPLICATIONS UNDER SECTION 39 (FORMERLY S. 35(A)) DISPOSED OF DURING

JUNE

201-70-M: GEORGE DYKHUIS (APPLICANT) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA AND ITS LOCAL 546 (RESPONDENT TRADE UNION) V. CANADIAN WESTINGHOUSE COMPANY LIMITED (RESPONDENT EMPLOYER). (GRANTED).

1892-72-M: JOHN VAN BENDEGEM (APPLICANT) V. INTERNATIONAL WOODWORKERS OF AMERICA LOCAL UNION 2-353 (RESPONDENT TRADE UNION) V. RCA LIMITED (RESPONDENT EMPLOYER). (GRANTED).

(SEE DECISION [1972] OLRB REP. 570).

1966-72-M: JOHN G. VANDERWERF (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW), LOCAL 199 (RESPONDENT TRADE UNION) V. GENERAL MOTORS OF CANADA LIMITED (RESPONDENT EMPLOYER). (GRANTED).

JURISDICTIONAL DISPUTES

1411-71-JD: NORTHDOWN DRYWALL & CONSTRUCTION LIMITED (COMPLAINANT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18; THE WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 562; ROBERTSON-YATES CORPORATION LIMITED (RESPONDENTS). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 666).

1853-72-JD: MODERN EXPOSAIC Co. LTD. (COMPLAINANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 625, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION No. 700 AND MOIR'S CARTAGE (RESPONDENTS). (DISMISSED).

1997-72-JD: FRANCON DIVISION OF CANFARGE LTD. (COMPLAINANT) V. LOCAL 93 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT #1) V. LOCAL 527 LABOURERS INTERNATIONAL UNION OF NORTH AMERICA (RESPONDENT #2) V. LOUIS DONOLO INC. (RESPONDENT #3). (DISMISSED).

2052-72-JD: WOOD, WIRE, AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 439 (COMPLAINANT) V. WALL ROC PLASTERING COMPANY LIMITED, AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 494 (RESPONDENTS). (WITHDRAWN).

REFERENCE TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)

1979-72-M: STRATFORD GENERAL HOSPITAL CORPORATION (EMPLOYER) V. STRATFORD HOSPITAL EMPLOYEES' UNION LOCAL 424, CANADIAN UNION OF PUBLIC EMPLOYEES (TRADE UNION). (DISMISSED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

564-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. SUNRISE PAVING & CONSTRUCTION Co. LTD. (RESPONDENT) V.

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 172 (INTERVENER).
(REQUEST DENIED).

566-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. SIVI CONSTRUCTION LIMITED (RESPONDENT) V. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 172 (INTERVENER). (REQUEST DENIED).

(SEE DECISION [1972] OLRB REP. 609).

1550-71-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 120 (APPLICANT) V. FREEMAN ELECTRIC LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE DECISION [1972] OLRB REP. 563).

1694-71-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) V. BARON HOTELS, SUDBURY LIMITED (RESPONDENT). (REQUEST DENIED).

1849-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 249 KINGSTON ONTARIO (APPLICANT) V. J.G. FITZPATRICK CONSTRUCTION LTD. (RESPONDENT). (REQUEST DENIED).

2005-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. ALPINE DRYWALL LTD. (RESPONDENT). (REQUEST DENIED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 95(2)

(FORMERLY S. 79(2))

854-71-M: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LIVINGSTON TRANSPORTATION LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE DECISION [1972] OLRB REP. 650).

1612-71-M: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LIVINGSTON TRANSPORTATION LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE DECISION [1972] OLRB REP. 590).

STATISTICAL TABLES - FISCAL YEAR 1972-73

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		<u>NUMBER FILED</u>	
		<u>1ST. QUARTER</u>	
		<u>APRIL 1, TO JUNE 30,</u>	
		<u>1972-73</u>	<u>1971-72</u>
I.	CERTIFICATION	271	265
II.	DECLARATION TERMINATING BARGAINING RIGHTS	10	24
III.	DECLARATION OF SUCCESSOR STATUS	9	4
IV.	DECLARATION THAT STRIKE UNLAWFUL	12	18
V.	DECLARATION THAT LOCKOUT UNLAWFUL	1	-
VI.	CONSENT TO PROSECUTE	29	96
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 79) (FORMERLY S. 65)	44	48
VIII.	MISCELLANEOUS	<u>30</u>	<u>35</u>
TOTAL		<u>406</u>	<u>490</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		<u>NUMBER FILED</u>	
		<u>1ST. QUARTER</u>	
		<u>APRIL 1, TO JUNE 30,</u>	
		<u>1972-73</u>	<u>1971-72</u>
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD		282	232

TABLE IIIAPPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONSBOARD BY MAJOR TYPES

		<u>NUMBER DISPOSED OF</u>	
		<u>1ST. QUARTER</u>	
		<u>APRIL 1, TO JUNE 30,</u>	<u>1972-73</u>
		<u>1972-73</u>	<u>1971-72</u>
I.	CERTIFICATION	248	259
II.	DECLARATION TERMINATING BARGAINING RIGHTS	9	16
III.	DECLARATION OF SUCCESSOR STATUS	1	4
IV.	DECLARATION THAT STRIKE UNLAWFUL	9	15
V.	DECLARATION THAT LOCKOUT UNLAWFUL	-	1
VI.	CONSENT TO PROSECUTE	31	35
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 79) (FORMERLY S. 65)	68	37
VIII.	MISCELLANEOUS	<u>46</u>	<u>30</u>
TOTAL		412	397
		<u><u> </u></u>	<u><u> </u></u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE
AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>		<u>NUMBER OF EMPLOYEES*</u>	
	<u>1ST. QUARTER</u>		<u>1ST. QUARTER</u>	
	<u>APRIL 1, TO JUNE 30,</u>		<u>APRIL 1, TO JUNE 30,</u>	
	<u>1972-73</u>	<u>1971-72</u>	<u>1972-73</u>	<u>1971-72</u>
I. <u>CERTIFICATION</u>				
GRANTED	165	152	4816	5023
DISMISSED	59	88	3472	4179
WITHDRAWN	<u>24</u>	<u>19</u>	<u>649</u>	<u>498</u>
TOTAL	248	259	8937	9700
	==	==	==	==
II. <u>TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u>				
GRANTED	6	7	145	502
DISMISSED	2	7	18	192
WITHDRAWN	<u>1</u>	<u>2</u>	<u>-</u>	<u>53</u>
TOTAL	9	16	163	747
	=	=	==	==

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>	
		<u>1ST. QUARTER</u>	
		<u>APRIL 1, TO JUNE 30,</u>	
		<u>1972-73</u>	<u>1971-72</u>
III.	<u>DECLARATION THAT STRIKE</u> <u>UNLAWFUL</u>		
	GRANTED	2	5
	DISMISSED	3	1
	WITHDRAWN	<u>4</u>	<u>9</u>
	TOTAL	9	15
		=	=
IV.	<u>DECLARATION THAT LOCKOUT</u> <u>UNLAWFUL</u>		
	GRANTED	-	-
	DISMISSED	-	1
	WITHDRAWN	<u>-</u>	<u>-</u>
	TOTAL	-	1
		=	=
V.	<u>CONSENT TO PROSECUTE</u>		
	GRANTED	7	16
	DISMISSED	2	3
	WITHDRAWN	<u>22</u>	<u>16</u>
	TOTAL	31	35
		=	=
VI.	<u>COMPLAINT OF UNFAIR PRACTICE</u> <u>IN EMPLOYMENT (SECTION 79)</u> <u>(FORMERLY S.65)</u>		
	GRANTED	4	5
	DISMISSED	26	10
	WITHDRAWN	<u>38</u>	<u>22</u>
	TOTAL	68	37
		=	=

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>	
	<u>1ST. QUARTER</u>	
	<u>APRIL 1, TO JUNE 30,</u>	
	<u>1972-73</u>	<u>1971-72</u>
<u>CERTIFICATION AFTER VOTE*</u>		
PRE-HEARING VOTE	11	12
POST-HEARING VOTE	14	15
BALLOTS NOT COUNTED	-	-
 <u>DISMISSED AFTER VOTE</u>		
PRE-HEARING VOTE	11	17
POST-HEARING VOTE	15	14
BALLOTS NOT COUNTED	<u>1</u>	<u>-</u>
TOTAL	52	58
	<u>=</u>	<u>=</u>

*INCLUDES APPLICANT-INTERVENER APPLICATION IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>	
	<u>1ST. QUARTER</u>	
	<u>APRIL 1, TO JUNE 30,</u>	
	<u>1972-73</u>	<u>1971-72</u>
*RESPONDENT UNION SUCCESSFUL	-	-
RESPONDENT UNION UNSUCCESSFUL	<u>3</u>	<u>5</u>
TOTAL	3	5
	<u>=</u>	<u>=</u>

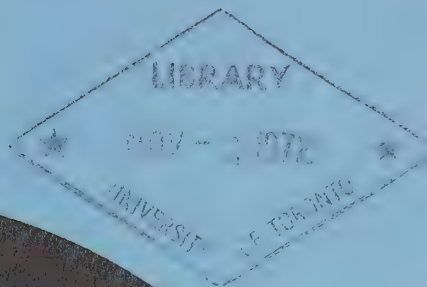
*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

72) OLRB REP.

PAGES 686 - 764

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054



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ONTARIO

Monthly Report

ONTARIO LABOUR RELATIONS BOARD

Chapter
100

ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1972] OLRB REP.

CASES REPORTED

ATOMIK CONST. CO. LTD. RE I.W.A.....	723
BERMINGHAM CONST. LTD. RE C.O.J.A.....	722
CONSOLIDATED MAINTENANCE SERVICES LTD. RE C.U.C.F.....	692
CORPORATION OF THE CITY OF HAMILTON RE NURSES' ASSOC. MACASSA LODGE.....	697
CORPORATION OF THE TOWN OF MARKHAM RE C.U.P.E.....	722
CORPORATION OF THE TOWNSHIP OF BLACK RIVER - MATHESON RE C.U.P.E.....	694
CORPORATION OF THE TOWNSHIP OF KING RE C.U.P.E.....	691
DUFFERIN-PEEL COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BD. RE C.U.P.E.....	686
INTERNATIONAL HARVESTER CO. OF CANADA, LTD. AND THE PATTERN MAKERS' ASSOC. OF HAMILTON & VICINITY, AFF'L OF THE PATTERN MAKERS' LEAGUE OF N. AMERICA AFL-CIO.....	762
I.U.E.C., L. 96 - OTTAWA RE CANADIAN ELEVATOR MANUFACTURERS, A DIVISION OF CANADIAN ELECTRICAL MANUFACTURERS ASSOC.....	720
JOHNSTON, JAMES DAVID, PRESIDENT OF L. 721, B.S.O.I.W., RE JOHN BOURGEOIS.....	709
NIAGARA WIRE WEAVING CO. LTD. RE U.E. AND U.S.A.....	688
NORTH AMERICAN ROCKWELL OF CANADA LTD. (FORMERLY CANADIAN MOTOR LAMP SUBSIDIARY OF N. AMERICAN ROCKWELL CORP.) RE MRS. IRENE CALVERLEY AND INT'L U. AUTO WORKERS L. 1297.....	744
NORTH AMERICAN VALVE & MFG. CORP. (FORMERLY RENFREW TOOL LTD.) AND U.S.A.....	689
NORTHERN ELECTRIC CO. LTD. RE U.A.W. AND CANADIAN UNION OF COMMUNICATION WORKERS AND U.E.....	740
NORTH SHORE BD. OF EDUCATION RE C.U.P.E. AND GROUP OF EMPLOYEES.....	746
NOVALIS OPERATING UNDER THE NAME OF SAINT PAUL UNIVERSITY RE C.U.P.E.....	729

PATCHOQUE PLYMOUTH HAWKESBURY MILLS, A DIVISION OF AMOCO CANADA PETROLEUM CO. LTD. RE I.W.A. AND GROUP OF EMPLOYEES.....	747
REID'S HOLDINGS (BELLEVILLE) LTD., UNION CARBIDE CANADA LTD., NAPANEE INDUSTRIES (1962) LTD., MEAD JOHNSON CANADA, A DIVISION OF BRISTOL MYERS CANADA LTD. RE U.R.W. AND EMPLOYEE.....	753
S.M.W., L. 30 RE SAL MESSINA.....	719
STERLING PACKERS LTD. RE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF N. AMERICAN, AFL-CIO-CLC AND GROUP OF EMPLOYEES.....	705
SUPERIOR AMBULANCE SERVICE AND C.U.P.E., L. 1464, C.L.C.....	739
TORONTO WESTERN HOSPITAL AND C.U.G.E.....	724
TORONTO WESTERN HOSPITAL AND C.U.G.E.....	731
TORONTO WESTERN HOSPITAL AND CYRIL JONES, ANTONIO MAONE, HER- NANDO CORONELL, JOHN BOYD, ALFREDO MORELLI, EVA POMBO, MARIA CABRAL, IRNE BIMANN AND MICHAEL DYAL.....	728
UNIVERSITY OF WESTERN ONT. RE P.G.W. L. 1962 AND GROUP OF EMPLOYEES.....	702
WAYNCO LTD. RE I.U.O.E., L. 793 AND GROUP OF EMPLOYEES.....	740

INDEX OF CASES

ARBITRATION - BARGAINING RIGHTS - WHETHER A COLLECTIVE AGREEMENT SUBSISTS BETWEEN THE TRADE UNION AND EMPLOYER - S1(1)(E) - EFFECT OF THE APPLICANT BEING A PARTY TO A PRIOR BOARD DECISION WHERE BARGAINING RIGHTS WERE ASCERTAINED - S96 - WHETHER MINISTER ADVISED TO APPOINT A CHAIRMAN OF AN ARBITRATION BOARD.	
THE CANADIAN UNION OF PUBLIC EMPLOYEES v. THE CORPORATION OF THE TOWN OF MARKHAM.....	722
BARGAINING RIGHTS - ARBITRATION - WHETHER A COLLECTIVE AGREEMENT SUBSISTS BETWEEN THE TRADE UNION AND EMPLOYER - S1(1)(E) - EFFECT OF THE APPLICANT BEING A PARTY TO A PRIOR BOARD DECISION WHERE BARGAINING RIGHTS WERE ASCERTAINED - S96 - WHETHER MINISTER ADVISED TO APPOINT A CHAIRMAN OF AN ARBITRATION BOARD.	
THE CANADIAN UNION OF PUBLIC EMPLOYEES v. THE CORPORATION OF THE TOWN OF MARKHAM.....	722
BARGAINING RIGHTS - BOARD CERTIFICATE NAMES PARENT AS TRADE UNION PARTY - WHETHER LOCAL HAS STATUS TO APPLY FOR APPOINTMENT OF A CONCILIATION OFFICER - S96 - WHETHER MINISTER ADVISED TO APPOINT A CONCILIATION OFFICER.	
SUPERIOR AMBULANCE SERVICE v. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1464, C.L.C.....	739
BARGAINING UNIT - CONSTRUCTION INDUSTRY - WHERE RESPONDENT OPERATES IN MORE THAN ONE BOARD GEOGRAPHIC AREA - WHETHER BOARD WILL VARY FROM ITS ESTABLISHED PRACTICE AND COMBINE GEOGRAPHIC AREAS.	
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v. WAYNCO LIMITED v. GROUP OF EMPLOYEES.....	740
BARGAINING UNIT - PRACTICE - AMENDMENT OF BARGAINING UNIT AT HEARING - ADDITIONAL EMPLOYEES AFFECTED - EMPLOYEES OR SCHOOL BOARD NOT AT PREMISES DURING SCHOOL VACATION PERIOD - WHETHER EMPLOYEES PERSONALLY SERVED.	
CANADIAN UNION OF PUBLIC EMPLOYEES v. THE NORTH SHORE BOARD OF EDUCATION v. GROUP OF EMPLOYEES.....	746

CERTIFICATION - EMPLOYEE - IDENTITY OF EMPLOYER - WHETHER SECTION 1(4) APPLIES - A COMPANY UNDERTAKING TO PROVIDE DRIVER TO B COMPANY - WHETHER JOINT EMPLOYEES - DRIVERS DEALING DIRECTLY WITH B COMPANY IN WORKING CONDITIONS AND WAGES - DAY TO DAY CONTROL INCLUDING DISCIPLINE IN HANDS OF B COMPANY - PAYMENT OF WAGES AND FRINGE BENEFITS WITH A COMPANY - WHETHER DRIVERS EMPLOYEES OF A OR B COMPANY.

UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA
v. REID'S HOLDINGS (BELLEVILLE) LIMITED, UNION CARBIDE
CANADA LIMITED, NAPANEE INDUSTRIES (1962) LTD., MEAD JOHN-
SON CANADA, A DIVISION OF BRISTOL MYERS CANADA LTD. v.
EMPLOYEE.....

753

CONCILIATION - SALE OF A BUSINESS - REFERENCE - S55(3) - SALE OF
A BUSINESS AT A TIME WHEN TRADE UNION HOLDING BARGAINING
RIGHTS FOR EMPLOYEES OF THE PREDECESSOR EMPLOYER ENTITLED
TO GIVE NOTICE - EFFECT OF S13 - EFFECT OF OBLIGATIONS OF
A SUCCESSOR EMPLOYER WHO CHANGES ITS NAME BY RESOLUTION
AMENDING ITS ARTICLES OF ASSOCIATION - S96 - WHETHER
MINISTER ADVISED TO APPOINT A CONCILIATION OFFICER.

NORTH AMERICAN VALVE AND MANUFACTURING CORPORATION (FORMERLY
RENFREW TOOL LTD.) v. UNITED STEELWORKERS OF AMERICA.....

689

CONSTITUTIONAL LAW - JURISDICTION - CONSTRUCTION INDUSTRY -
WHETHER CONSTRUCTION OF BRIDGE CONNECTING RAILWAY LINE
WITH PROVINCE OF ONTARIO AND STATE OF NEW YORK AN "UN-
DERTAKING" WITHIN THE MEANING OF S92(10)(A) OF THE BNA
ACT - WHETHER BOARD TO TERMINATE THE PROCEEDINGS.

UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA v.
BERMINGHAM CONSTRUCTION LIMITED.....

722

CONSTITUTIONAL LAW - JURISDICTION - WHETHER THE BOARD MAY ASSERT
JURISDICTION OVER EMPLOYEES BOTH RESIDENT AND WORKING IN
MONTREAL, QUEBEC.

CANADIAN UNION OF PUBLIC EMPLOYEES v. SAINT PAUL UNIVERSITY
OPERATING UNDER THE NAME OF NOVALIS.....

729

CONSTRUCTION INDUSTRY - BARGAINING UNIT - WHERE RESPONDENT
OPERATES IN MORE THAN ONE BOARD GEOGRAPHIC AREA - WHETHER
BOARD WILL VARY FROM ITS ESTABLISHED PRACTICE AND COMBINE
GEOGRAPHIC AREAS.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v.
WAYNCO LIMITED v. GROUP OF EMPLOYEES.....

740

CONSTRUCTION INDUSTRY - CONSTITUTIONAL LAW - JURISDICTION -
 WHETHER CONSTRUCTION OF BRIDGE CONNECTING RAILWAY LINE
 WITH PROVINCE OF ONTARIO AND STATE OF NEW YORK AN "UN-
 DERTAKING" WITHIN THE MEANING OF S92(10)(A) OF THE BNA
ACT - WHETHER BOARD TO TERMINATE THE PROCEEDINGS.

UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA v.
 BIRMINGHAM CONSTRUCTION LIMITED.....

722

EMPLOYEE - CERTIFICATION - IDENTITY OF EMPLOYER - WHETHER SECTION
 1(4) APPLIES - A COMPANY UNDERTAKING TO PROVIDE DRIVER TO
 B COMPANY - WHETHER JOINT EMPLOYEES - DRIVERS DEALING DIRECT-
 LY WITH B COMPANY IN WORKING CONDITIONS AND WAGES - DAY TO
 DAY CONTROL INCLUDING DISCIPLINE IN HANDS OF B COMPANY - PAY-
 MENT OF WAGES AND FRINGE BENEFITS WITH A COMPANY - WHETHER
 DRIVERS EMPLOYEES OF A OR B COMPANY.

UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA
 v. REID'S HOLDINGS (BELLEVILLE) LIMITED, UNION CARBIDE
 CANADA LIMITED, NAPANEE INDUSTRIES (1962) LTD., MEAD JOHN-
 SON CANADA, A DIVISION OF BRISTOL MYERS CANADA LTD. v.
 EMPLOYEE.....

753

EMPLOYEES - REFERENCE - S95(2) - CONFIDENTIAL CAPACITY -
 WHETHER AN EMPLOYEE - S1(3)(B) - DEPUTY CLERK TREASURER
 OF A MUNICIPAL CORPORATION - WHETHER TO BE EXCLUDED FROM
 THE BARGAINING UNIT.

THE CANADIAN UNION OF PUBLIC EMPLOYEES v. THE CORPORATION
 OF THE TOWNSHIP OF BLACK RIVER - MATHESON.....

694

EMPLOYEES - S1(3)(B) - "NURSING SUPERVISORS" - CRITERIA REVIEWED
 - EFFECT OF RESPONSIBILITY OF PREPARING "EVALUATION RE-
 PORTS" - WHETHER MERELY A MECHANICAL OPERATION - EFFECT OF
 MAKING NO FINAL DECISION WITH RESPECT TO THE REPORTS.

NURSES' ASSOCIATION MACASSA LODGE v. THE CORPORATION OF
 THE CITY OF HAMILTON.....

697

EMPLOYEES - SECURITY GUARDS - S11 - WHETHER EMPLOYEES ARE PER-
 FORMING SECURITY GUARD SERVICES - WHETHER THEY EXERCISE
 SEARCH AND MONITORIAL AUTHORITY OVER OTHER EMPLOYEES -
 WHETHER A CONFLICT OF INTEREST WITH OTHER EMPLOYEES OF
 THE RESPONDENT.

INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA
 LOCAL 1962 v. THE UNIVERSITY OF WESTERN ONTARIO v. GROUP
 OF EMPLOYEES.....

702

EVIDENCE - PRACTICE - PHOTO-COPY OF A LETTER - WHETHER ADMISSIBLE BEFORE THE BOARD - POLICY STATEMENT - SUCH EVIDENCE IS ACCEPTED BY THE BOARD AS PRIMA FACIE EVIDENCE THAT IT IS IN THE SAME FORM AS THE ORIGINAL DOCUMENT - WHETHER VIVA VOCE EVIDENCE OF A WITNESS SERVED TO IDENTIFY DOCUMENT IN ANY EVENT - PRACTICE - IN ABSENCE OF CHARGES OF AN UNFAIR LABOUR PRACTICE ALLEGED TO HAVE BEEN COMMITTED BY A PARTY, ANOTHER PARTY WOULD NOT BE PERMITTED TO TENDER EVIDENCE PERTAINING TO THE CONDUCT OF CERTAIN PERSONS - IN THE EVENT THE EVIDENCE TENDERED AS A DEFENCE TO CHARGES MADE BY ANOTHER PARTY TO THE PROCEEDINGS THE BOARD RULED IT ADMISSIBLE.

INTERNATIONAL WOODWORKERS OF AMERICA v. ATOMIK CONSTRUCTION COMPANY LIMITED.....

723

FAIR REPRESENTATION - S79 - EFFECT OF FAILURE OF A TRADE UNION TO PROCESS A GRIEVANCE - NATURE OF CAUSE OF ACTION - WHETHER DUTY OF FAIR REPRESENTATION FULFILLED - EFFECT OF ACTING IN A MANNER THAT IS ARBITRARY DISCRIMINATORY OR IN BAD FAITH.

SAL MESSINA v. LOCAL 30 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION.....

719

JURISDICTION - CONSTITUTIONAL LAW - WHETHER THE BOARD MAY ASSERT JURISDICTION OVER EMPLOYEES BOTH RESIDENT AND WORKING IN MONTREAL, QUEBEC.

CANADIAN UNION OF PUBLIC EMPLOYEES v. SAINT PAUL UNIVERSITY OPERATING UNDER THE NAME OF NOVALIS.....

729

JURISDICTION - CONSTRUCTION INDUSTRY - CONSTITUTIONAL LAW - WHETHER CONSTRUCTION OF BRIDGE CONNECTING RAILWAY LINE WITH PROVINCE OF ONTARIO AND STATE OF NEW YORK AN "UNDERTAKING" WITHIN THE MEANING OF S92(10)(A) OF THE BNA ACT - WHETHER BOARD TO TERMINATE THE PROCEEDINGS.

UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA v. BIRMINGHAM CONSTRUCTION LIMITED.....

722

MEMBERSHIP EVIDENCE - WHETHER AN APPLICANT FOR MEMBERSHIP PAID THE DOLLAR - EFFECT OF BOARD NOT MAKING A FINDING - EFFECT OF FAILURE TO SATISFY THE ONUS - WHETHER BALANCE OF EVIDENCE OF MEMBERSHIP AFFECTED - EFFECT OF FUNCTIONS EXERCISED BY THE COLLECTOR.

AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC v. STERLING PACKERS LTD. v. GROUP OF EMPLOYEES...

705

PETITION - DUTY OF FAIR REPRESENTATION - WHETHER UNION ACTED
ARBITRARILY - UNRESPONSIVENESS OF UNION APPEALS.

JOHN BOURGEOIS v. LOCAL 721, INTERNATIONAL ASSOCIATION OF
BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS..... 709

PRACTICE - BARGAINING UNIT - AMENDMENT OF BARGAINING UNIT AT
HEARING - ADDITIONAL EMPLOYEES AFFECTED - EMPLOYEES OR
SCHOOL BOARD NOT AT PREMISES DURING SCHOOL VACATION PERIOD
- WHETHER EMPLOYEES PERSONALLY SERVED.

CANADIAN UNION OF PUBLIC EMPLOYEES v. THE NORTH SHORE
BOARD OF EDUCATION v. GROUP OF EMPLOYEES..... 746

PRACTICE - EVIDENCE - PHOTO-COPY OF A LETTER - WHETHER ADMISSIBLE
BEFORE THE BOARD - POLICY STATEMENT - SUCH EVIDENCE IS
ACCEPTED BY THE BOARD AS PRIMA FACIE EVIDENCE THAT IT IS IN
THE SAME FORM AS THE ORIGINAL DOCUMENT - WHETHER VIVA VOCE
EVIDENCE OF A WITNESS SERVED TO IDENTIFY DOCUMENT IN ANY
EVENT - PRACTICE - IN ABSENCE OF CHARGES OF AN UNFAIR LABOUR
PRACTICE ALLEGED TO HAVE BEEN COMMITTED BY A PARTY, ANOTHER
PARTY WOULD NOT BE PERMITTED TO TENDER EVIDENCE PERTAINING
TO THE CONDUCT OF CERTAIN PERSONS - IN THE EVENT THE EVIDENCE
TENDERED AS A DEFENCE TO CHARGES MADE BY ANOTHER PARTY TO THE
PROCEEDINGS THE BOARD RULED IT ADMISSIBLE.

INTERNATIONAL WOODWORKERS OF AMERICA v. ATOMIK CONSTRUCTION
COMPANY LIMITED..... 723

PRACTICE - IMPROPRIETY IN MEMBERSHIP EVIDENCE - REQUEST TO
WITHDRAW - WHETHER BOARD WILL IMPOSE A BAR.

INTERNATIONAL WOODWORKERS OF AMERICA v. PATCHOQUE PLYMOUTH
HAWKESBURY MILLS, A DIVISION OF AMOCO CANADA PETROLEUM COM-
PANY LTD. v. GROUP OF EMPLOYEES..... 747

PRACTICE - STRIKE - APPLICATION FOR DECLARATION OF UNLAWFUL
STRIKE - WHETHER PURSUANT TO LABOUR RELATIONS ACT OR
HOSPITAL LABOUR DISPUTES ARBITRATION ACT - WHETHER BOARD
WILL PERMIT AMENDMENT-PUBLIC INTEREST - WHETHER BOARD
WILL TAKE A NARROW AND TECHNICAL VIEW OF ITS POWERS -
WHETHER BOARD WILL PROCEED UPON BEING SERVED WITH NOTICE
OF PROHIBITION.

THE TORONTO WESTERN HOSPITAL v. CANADIAN UNION OF GENERAL
EMPLOYEES..... 731

PRACTICE - TRADE UNION - INTERVENER STATUS - WHETHER A PARENT TRADE UNION MAY INTERVENE WHERE COLLECTIVE AGREEMENT FILED IN SUPPORT OF REPRESENTATION IS IN THE NAME OF THE LOCAL - EFFECT OF BOARD PRACTICE IN RECOGNIZING A LOCAL UNION AND ITS PARENT ORGANIZATION AS TWO DISTINCT LEGAL ENTITIES.

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) v. THE NIAGARA WIRE WEAVING COMPANY LIMITED v. UNITED STEELWORKERS OF AMERICA..... 688

PROSECUTION - STRIKE - S65 - WHETHER ARBITRATION IS A MORE APPROPRIATE REMEDY THAN PROSECUTION - NATURE OF TWO REMEDIES EXPLAINED AND DISTINGUISHED.

CANADIAN ELEVATOR MANUFACTURERS, A DIVISION OF CANADIAN ELECTRICAL MANUFACTURERS ASSOCIATION v. INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 96 - OTTAWA..... 720

REPRESENTATION VOTE - S7(3) - WHETHER BOARD IN THE CIRCUMSTANCES TO EXERCISE IT DISCRETION DIRECTING A REPRESENTATION VOTE - EFFECT OF A BOARD FINDING THAT MORE THAN 65% OF THE EMPLOYEES OF THE RESPONDENT ARE REPRESENTED BY THE APPLICANT - S7(1).

CANADIAN UNION OF PUBLIC EMPLOYEES v. THE DUFFERIN-PEEL COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD..... 686

REPRESENTATION VOTE - S92(5)(6) - BOARD PRACTICE IN "RUN-OFF VOTES" EXHIBITED.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) v. NORTHERN ELECTRIC COMPANY LIMITED v. CANADIAN UNION OF COMMUNICATION WORKERS v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)..... 740

SALE OF A BUSINESS - REFERENCE - CONCILIATION - S55(3) - SALE OF A BUSINESS AT A TIME WHEN TRADE UNION HOLDING BARGAINING RIGHTS FOR EMPLOYEES OF THE PREDECESSOR EMPLOYER ENTITLED TO GIVE NOTICE - EFFECT OF S13 - EFFECT OF OBLIGATIONS OF A SUCCESSOR EMPLOYER WHO CHANGES ITS NAME BY RESOLUTION AMENDING ITS ARTICLES OF ASSOCIATION - S96 - WHETHER MINISTER ADVISED TO APPOINT A CONCILIATION OFFICER.

NORTH AMERICAN VALVE AND MANUFACTURING CORPORATION (FORMERLY RENFREW TOOL LTD.) v. UNITED STEELWORKERS OF AMERICA..... 689

- S79 - FAIR REPRESENTATION - EFFECT OF FAILURE OF A TRADE UNION TO PROCESS A GRIEVANCE - NATURE OF CAUSE OF ACTION - WHETHER DUTY OF FAIR REPRESENTATION FULFILLED - EFFECT OF ACTING IN A MANNER THAT IS ARBITRARY DISCRIMINATORY OR IN BAD FAITH.
- SAL MESSINA v. LOCAL 30 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION..... 719
- S79 - WHETHER A TRANSFER OF EMPLOYEES TO ANOTHER LOCATION IN VIOLATION OF THE ACT - S58(c) - EFFECT OF FAILURE TO SATISFY THE BOARD THAT THE RESPONDENT KNEW OF THE COMPLAINANT'S UNION ACTIVITY.
- CANADIAN UNION OF GENERAL EMPLOYEES v. CONSOLIDATED MAINTENANCE SERVICES LIMITED..... 692
- S79 - WHETHER WORK PERFORMED UNDER A PARTICULAR CLASSIFICATION HAVING BEEN ASSIGNED TO NON-BARGAINING UNIT EMPLOYEES IS AN UNFAIR LABOUR PRACTICE - S58(A) - S56 - S59(1) - EFFECT OF REORGANIZATION OF A DEPARTMENT OF THE RESPONDENT'S UNDERTAKING.
- CANADIAN UNION OF PUBLIC EMPLOYEES v. THE CORPORATION OF THE TOWNSHIP OF KING..... 691
- SECURITY GUARDS - EMPLOYEES - S11 - WHETHER EMPLOYEES ARE PERFORMING SECURITY GUARD SERVICES - WHETHER THEY EXERCISE SEARCH AND MONITORIAL AUTHORITY OVER OTHER EMPLOYEES - WHETHER A CONFLICT OF INTEREST WITH OTHER EMPLOYEES OF THE RESPONDENT.
- INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1962 v. THE UNIVERSITY OF WESTERN ONTARIO v. GROUP OF EMPLOYEES..... 702
- STRIKE - APPLICATION FOR DECLARATION OF UNLAWFUL STRIKE - WHETHER BOARD WILL NAME SPECIFIC INDIVIDUALS.
- THE TORONTO WESTERN HOSPITAL v. CYRIL JONES, ANTONIO MAONE, HERNANDO CORONELL, JOHN BOYD, ALFREDO MORELLI, EVA POMBO, MARIA CABRAL, IRENE BIMANN AND MICHAEL DYAL..... 728
- STRIKE - APPLICATION FOR DECLARATION OF UNLAWFUL STRIKE - WHETHER TRADE UNION CALLED OR AUTHORIZED - WHETHER AUTHORIZED - WHETHER BOARD WILL EXERCISE ITS DISCRETION - WHETHER APPLICATION RE HOSPITAL EMPLOYEES CAN BE BROUGHT UNDER LABOUR RELATIONS ACT.
- THE TORONTO WESTERN HOSPITAL v. CANADIAN UNION OF GENERAL EMPLOYEES..... 724

STRIKE - PRACTICE - APPLICATION FOR DECLARATION OF UNLAWFUL
STRIKE - WHETHER PURSUANT TO LABOUR RELATIONS ACT OR
HOSPITAL LABOUR DISPUTES ARBITRATION ACT - WHETHER BOARD
WILL PERMIT AMENDMENT-PUBLIC INTEREST - WHETHER BOARD
WILL TAKE A NARROW AND TECHNICAL VIEW OF ITS POWERS -
WHETHER BOARD WILL PROCEED UPON BEING SERVED WITH NOTICE
OF PROHIBITION.

THE TORONTO WESTERN HOSPITAL v. CANADIAN UNION OF GENERAL
EMPLOYEES.....

731

STRIKE - PROSECUTION - S65 - WHETHER ARBITRATION IS A MORE
APPROPRIATE REMEDY THAN PROSECUTION - NATURE OF TWO
REMEDIES EXPLAINED AND DISTINGUISHED.

CANADIAN ELEVATOR MANUFACTURERS, A DIVISION OF CANADIAN
ELECTRICAL MANUFACTURERS ASSOCIATION v. INTERNATIONAL
UNION OF ELEVATOR CONSTRUCTORS, LOCAL 96 - OTTAWA.....

720

TERMINATION - OPERATIONS DISCONTINUED - NO EMPLOYEES - WHETHER
BOARD WILL TERMINATE BARGAINING RIGHTS.

INTERNATIONAL HARVESTER COMPANY OF CANADA, LIMITED v. THE
PATTERN MAKERS' ASSOCIATION OF HAMILTON & VICINITY,
AFFILIATED OF THE PATTERN MAKERS' LEAGUE OF NORTH AMERICA
AFL-CIO.....

762

TERMINATION - TIMELINESS - S49(2)(A) - "ONLY AFTER THE COMMENCE-
MENT OF THE LAST TWO MONTHS OF THE OPERATION OF THE COLLECTIVE
AGREEMENT" - INTERPRETATION - WHETHER AN APPLICATION FOR
TERMINATION WILL ENTERTAINED ON THE 16TH OF JUNE WHERE THE
COLLECTIVE AGREEMENT CEASES TO OPERATE ON AUGUST 16.

MRS. IRENE CALVERLEY v. INTERNATIONAL UNION AUTO WORKERS
LOCAL 1297 v. NORTH AMERICAN ROCKWELL OF CANADA LTD. (FOR-
MERLY CANADIAN MOTOR LAMP SUBSIDIARY OF NORTH AMERICAN
ROCKWELL CORP.).....

744

TRADE UNION - PRACTICE - INTERVENER STATUS - WHETHER A PARENT
TRADE UNION MAY INTERVENE WHERE COLLECTIVE AGREEMENT FILED
IN SUPPORT OF REPRESENTATION IS IN THE NAME OF THE LOCAL -
EFFECT OF BOARD PRACTICE IN RECOGNIZING A LOCAL UNION AND
ITS PARENT ORGANIZATION AS TWO DISTINCT LEGAL ENTITIES.

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA
(UE) v. THE NIAGARA WIRE WEAVING COMPANY LIMITED v. UNITED
STEELWORKERS OF AMERICA.....

688

AND TO PRESERVE THAT CONDITION UNTIL THE HAPPENING OF THE EVENTS SET OUT THEREIN. TO ACCOMPLISH THIS END THE BROADEST LANGUAGE IS EMPLOYED, AND IN OUR OPINION, THE USE OF THE WORDS "OR ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER ETC. ETC." ARE OBVIOUSLY DESIGNED TO BLANKET EVERY ASPECT OF THE RELATIONSHIP BETWEEN EMPLOYER, EMPLOYEE AND THE TRADE UNION, INCLUDING THE SPECIFIC REFERENCE TO RATES OF WAGES AND THE MORE GENERAL ALLUSION TO OTHER CONDITIONS OF EMPLOYMENT CONTAINED IN THE SUBSECTION.

15. IN VIEW OF THE FOREGOING, THE BOARD FINDS THAT THE WORDS "RIGHTS, PRIVILEGES AND DUTY" APPEARING IN SUBSECTION (2) OF SECTION 70 MUST BE READ AS HAVING THE SAME BROAD INCLUSIVE SWEEP AS THEY HAVE WHEN THEY ARE USED IN SUBSECTION (1). THE USE OF THE DEFINITE ARTICLE IN THE SECOND SUBSECTION IN PLACE OF THE WORD "ANY" IN THE FIRST SUBSECTION LENDS SUPPORT TO THE CONCLUSION WE HAVE REACHED AS TO THE ALL INCLUSIVE NATURE OF THE WORDS "RIGHTS, PRIVILEGE OR DUTY". IN ANY EVENT, IT IS BEYOND DISPUTE THAT THE WORD "RIGHT" WHEN USED IN THE CONTEXT OF EMPLOYER EMPLOYEE RELATIONSHIPS MUST INCLUDE RIGHTS RELATIVE TO WAGES.

16. THE QUESTION NOW ARISES AS TO WHETHER IN FACT KHODADEEN HAD A RIGHT TO THE INCREASE AND CONSEQUENTLY WHETHER THE FAILURE TO GIVE THE INCREASE AMOUNTS TO AN ALTERATION OF A RIGHT WITHIN THE MEANING OF SECTION 70(2). COUNSEL FOR THE COMPLAINANT ARGUED THAT THE RIGHTS REFERRED TO IN THE ACT ARE NOT MORAL RIGHTS OR STATUTE RIGHTS BUT ARE RIGHTS ARISING OUT OF THE CONTRACT OF EMPLOYMENT.

17. THIS BRINGS US BACK TO A CONSIDERATION OF THAT PORTION OF THE APPLICATION FORM DEALING WITH THE WORKING CONDITIONS UPON WHICH THE WITNESS AND THE HOSPITAL AGREED ON THE DATE OF KHODADEEN'S EMPLOYMENT. IT IS CLEAR FROM AN EXAMINATION OF THIS DOCUMENT THAT THE ONLY REFERENCE MADE TO THE SALARY INCREASE IS THAT CONTAINED IN ITEM 4 OF THE WORKING CONDITIONS. THE INCREASE REFERRED TO THEREIN IS, AS THE DOCUMENT EXPRESSES IT, AN INCREASE ACCORDING TO THE SCALE. THE WITNESS TESTIFIED THAT HE HAD RECEIVED THIS TYPE OF SALARY INCREASE UNTIL ATTAINING THE TOP OF SCALE.

18. THE FACT IS THAT THE WORKING CONDITIONS UNDER WHICH KHODADEEN WAS EMPLOYED WERE SET OUT IN A WRITTEN CONTRACT OF EMPLOYMENT SIGNED BY BOTH PARTIES. THE BOARD IS OF THE OPINION THAT IT THEREFORE CANNOT ENTERTAIN THE EXTRINSIC EVIDENCE RELATING TO SISTER EDWARD AND THE PREVIOUS PAYMENTS. IN VIEW OF THE FACT THAT THE CONTRACT STIPULATES THE PAYMENT OF ONLY ONE FORM OF SALARY INCREASE AND THE EVIDENCE IS THAT THAT HAS BEEN PAID WHEN DUE, WE CANNOT FIND THAT KHODADEEN OR ANY OTHER EMPLOYEE WHO HAS SIGNED A SIMILAR AGREEMENT HAS A RIGHT TO A COST OF LIVING INCREASE WHICH IS NOT PROVIDED FOR IN THE CONTRACT.

19. IT FOLLOWS, IN VIEW OF THE FOREGOING, THAT THERE HAS BEEN NO VIOLATION OF SECTION 70(2) OF THE ACT ON THE PART OF THE RESPONDENT AND THE APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: JUNE 30, 1972.

THE EVIDENCE IN THIS MATTER IS SET OUT IN THE DECISION OF THE MAJORITY.

I JOIN WITH THE REASONING AND CONCLUSION OF THE MAJORITY IN FINDING THAT THE WORDS "RIGHTS, PRIVILEGES AND DUTY" APPEARING IN SECTION 70(2) OF THE LABOUR RELATIONS ACT MUST BE READ AS HAVING THE SAME BROAD INCLUSIVE SWEEP AS THEY HAVE WHEN THEY ARE USED IN SECTION 70(1) OF THE ACT, AND THAT THE WORD "RIGHT" WHEN USED IN THE CONTEXT OF EMPLOYER-EMPLOYEE RELATIONSHIPS INCLUDES RIGHTS RELATIVE TO WAGES.

BASED ON THE EVIDENCE IN THIS CASE AS OUTLINED PARTICULARLY IN PARAGRAPHS 4, 7, 8, 9 AND 10 OF THE MAJORITY DECISION, I FIND THAT THE RESPONDENT VIOLATED SECTION 70(2) OF THE ACT AND I WOULD ORDER THE RESPONDENT TO PAY TO J. A. KHODADEEN THE COST OF LIVING INCREASE FOR 1972.

1890-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE DUFFERIN-PEEL COUNTRY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: W. A. ACTON FOR THE APPLICANT; W.M. TEMPLE AND C.A. BRYANT FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 7, 1972.

1. THE NAME "THE DUFFERIN-PEEL ROMAN CATHOLIC SEPARATE SCHOOL BOARD", APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "THE DUFFERIN-PEEL COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD."

. . .

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 30, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION, AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE

TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. AT THE HEARING OF THIS MATTER ON JUNE 27, 1972, THE RESPONDENT REQUESTED THE BOARD TO DIRECT A REPRESENTATION VOTE IN THIS MATTER IN VIEW OF THE CONFLICTING DESIRES OF THE EMPLOYEES AS EXHIBITED IN PREVIOUS APPLICATIONS BEFORE THE BOARD.

6. IN THIS REGARD, IT WOULD APPEAR THAT THE APPLICANT'S PREVIOUS APPLICATION FOR CERTIFICATION (BOARD FILE NO. 156-70-R) WAS DISMISSED PURSUANT TO THE DECISION OF THE BOARD DATED MAY 27, 1971, FOLLOWING ITS FAILURE TO OBTAIN MORE THAN FIFTY PER CENT OF THE BALLOTS CAST AT A REPRESENTATION VOTE CONDUCTED UNDER THE AUSPICES OF THE BOARD ON MAY 17, 1971. IN THIS REGARD, THE BOARD IMPOSED UPON THE APPLICANT ITS CUSTOMARY SIX MONTH BAR.

7. IT WOULD FURTHER APPEAR THAT THE EMPLOYEES SUBSEQUENTLY ATTEMPTED TO FORM AN ASSOCIATION OF THEIR OWN AND THEREAFTER APPLIED FOR CERTIFICATION UNDER THE NAME "DUFFERIN-PEEL SEPARATE SCHOOL BOARD CARETAKERS AND MAINTENANCE ASSOCIATION". (BOARD FILE NO. 1024-71-R). HOWEVER, FOR REASONS AS OUTLINED IN THE DECISION OF THE BOARD DATED OCTOBER 26, 1971, THE APPLICANT FAILED TO SATISFY THE BOARD THAT IT HAD ACQUIRED STATUS AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE ACT AND ITS APPLICATION WAS ACCORDINGLY DISMISSED. A SECOND APPLICATION FILED BY THIS ASSOCIATION (BOARD FILE NO. 1764-71-R) WAS AGAIN DISMISSED PURSUANT TO THE DECISION OF THE BOARD DATED MAY 17, 1972. IN THAT INSTANCE, THE APPLICANT HAD FAILED TO ADDUCE SATISFACTORY EVIDENCE OF MEMBERSHIP.

8. IN OUR OPINION, THE PRINCIPLE APPLICABLE IN THIS CIRCUMSTANCES IS FOUND IN THE SHERATON VISCOUNT MOTOR HOTEL CASE [1971] OLRB REP. 693 WHEREIN THE BOARD STATED:

"WHILE THE BOARD HAS THE DISCRETION TO DIRECT A REPRESENTATION VOTE IN CERTIFICATION APPLICATIONS, THAT DISCRETION CANNOT BE EXERCISED ARBITRARILY BUT MUST BE EXERCISED JUDICIOUSLY. UNDER THE PROVISIONS OF SECTION 7(1) OF THE ACT, ON AN APPLICATION FOR CERTIFICATION THE BOARD MUST ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT "AT THE TIME THE APPLICATION WAS MADE". UNDER THAT SECTION THE BOARD MUST ALSO ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT WHO WERE MEMBERS OF THE TRADE UNION AT SUCH TIME AS IS DETERMINED UNDER CLAUSE (J) OF SUBSECTION (2) OF SECTION 92 (THE TERMINAL DATE OF THIS APPLICATION). UNLESS THE APPLICANT'S MEMBERSHIP EVIDENCE IS CAST IN DOUBT BY A STATEMENT OF OBJECTIONS

FILED BY EMPLOYEES WHO ALSO SIGNED APPLICATION FOR MEMBERSHIP CARDS IN THE APPLICANT OR UNLESS THERE IS SOME UNRESOLVED DOUBT CONCERNING THE MEMBERSHIP EVIDENCE WHICH WAS CREATED BY SOME ACT OR OMISSION ON THE PART OF THE APPLICANT UNION, WHERE THE BOARD IS SATISFIED THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE APPLICANT, THE BOARD "SHALL CERTIFY THE TRADE UNION AS THE BARGAINING AGENT OF THE EMPLOYEES IN THE BARGAINING UNIT" PURSUANT TO THE PROVISIONS OF SECTION 7(3) OF THE ACT."

9. HAVING REGARD THEREFORE TO THE PRINCIPLE ABOVE-CITED, TO THE FACT THAT THE SIX MONTH BAR IMPOSED UPON THE APPLICANT HAS EXPIRED AS OF THE DATE OF THE FILING OF THIS APPLICATION AND THAT THERE IS NOTHING BEFORE US CASTING DOUBT ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT OR ON THE PERCENTAGE OF MEMBERSHIP ENJOYED BY THE APPLICANT AT THE RELEVANT TIME, THE REQUEST OF THE RESPONDENT THAT A REPRESENTATION VOTE BE DIRECTED IN THIS MATTER IS ACCORDINGLY DENIED.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

2032-72-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)
(APPLICANT) V. THE NIAGARA WIRE WEAVING COMPANY LIMITED (RESPONDENT) V.
UNITED STEELWORKERS OF AMERICA (INTERVENER).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: ROSS RUSSELL AND JOHN TRUFAL FOR THE APPLICANT; H. A. BERESFORD, A. V. SNEATH AND K. FRETZ FOR THE RESPONDENT; D. M. STOREY AND G. MARSHALL FOR THE INTERVENER.

DECISION OF THE BOARD: JULY 7, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. IN THIS APPLICATION FOR CERTIFICATION, THE APPLICANT IS SEEKING REPRESENTATION RIGHTS ON BEHALF OF CERTAIN EMPLOYEES OF THE RESPONDENT'S PLANT IN WELLAND. THE RESPONDENT IS IN AGREEMENT WITH THE GEOGRAPHICAL DESCRIPTION OF THE PROPOSED BARGAINING UNIT.

3. IN SUPPORT OF ITS FORM 11 INTERVENTION IN THESE PROCEEDINGS, THE INTERVENER HAD FILED A COLLECTIVE AGREEMENT ENTERED INTO BETWEEN UNITED STEELWORKERS OF AMERICA, LOCAL 4528 AND THE RESPONDENT. ARTICLE 1:01 OF THIS AGREEMENT WHICH IS PRESENTLY SUBJECT TO NEGOTIATIONS FOR

RENEWAL, PROVIDES FOR THE RECOGNITION BY THE RESPONDENT OF LOCAL 4528 "AS THE EXCLUSIVE COLLECTIVE BARGAINING AGENT...FOR ALL OF THE COMPANY'S EMPLOYEES AT ITS PLANT IN NIAGARA FALLS..." IN ADDITION THE INTERVENER HAS SUBMITTED A MEMBERSHIP CARD "TO BE USED AS EVIDENCE" IN THESE PROCEEDINGS.

4. AT THE HEARING OF THIS MATTER, THE INTERVENER SUBMITTED THAT IT WAS THE INCUMBENT BARGAINING AGENT FOR THE EMPLOYEES AT THE RESPONDENT'S PLANTS AT BOTH NIAGARA FALLS AND WELLAND, WHO BECAUSE OF INTERCHANGE WOULD FORM ONE APPROPRIATE UNIT IN THE TWO MUNICIPALITIES.

5. ASSUMING BUT WITHOUT DECIDING THAT THE BOARD WOULD FIND MERIT IN THE INTERVENER'S CLAIM FOR A MULTI-LOCATION BARGAINING UNIT AND ASSUMING THAT THE MEMBERSHIP CARD REPRESENTS EVIDENCE OF MEMBERSHIP ON BEHALF OF ONE EMPLOYEE, (WHICH NAME THEREIN DOES NOT CORRESPOND WITH ANY OF THE NAMES APPEARING ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THIS REGARD) SUCH CARD, IN OUR OPINION, AT BEST ONLY ESTABLISHES THE RIGHT OF THE INTERVENER TO APPEAR AS PARTY TO THESE PROCEEDINGS. IT DOES NOT GIVE THE INTERVENER THE RIGHT TO MAKE REPRESENTATIONS ON BEHALF OF LOCAL 4528 IN VIEW OF THE WELL-ESTABLISHED PRACTICE OF THE BOARD IN RECOGNIZING A LOCAL UNION AND ITS PARENT ORGANIZATION AS TWO DISTINCT LEGAL ENTITIES. (IN THIS REGARD, SEE THE CORPORATION OF THE TOWN OF MARKHAM CASE [1972] OLRB REP. 36). ACCORDINGLY, WE FIND THAT THE INTERVENER HAS FAILED TO ESTABLISH A SUFFICIENT INTEREST IN THESE PROCEEDINGS SO AS TO ENABLE IT TO MAKE FURTHER REPRESENTATIONS HEREIN.

6. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT WELLAND SAVE AND EXCEPT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 5, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1737-71-M: NORTH AMERICAN VALVE AND MANUFACTURING CORPORATION (FORMERLY RENFREW TOOL LTD.) (EMPLOYER) V. UNITED STEELWORKERS OF AMERICA (TRADE UNION).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS H.J.F. ADE AND D. ARCHER.

APPEARANCES AT THE HEARING: E. ROVET AND E. BRIGINSHAW FOR THE TRADE UNION; NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD:

JULY 11, 1972.

1. THIS IS A REFERENCE FROM THE MINISTER OF LABOUR TO THE BOARD PURSUANT TO SECTION 96 OF THE LABOUR RELATIONS ACT. IN THIS REFERENCE THE QUESTION TO BE DETERMINED IS WHETHER THE MINISTER OF LABOUR HAS THE AUTHORITY THE LABOUR RELATIONS ACT TO APPOINT A CONCILIATION OFFICER.
2. THE EMPLOYER WAS NEITHER PRESENT NOR REPRESENTED AT THE HEARING BEFORE THE BOARD. ACCORDINGLY, THE EVIDENCE BEFORE THE BOARD WAS PRODUCED BY THE TRADE UNION AND WAS IN NO WAY CHALLENGED.
3. ON JANUARY 5, 1971, THE BOARD ISSUED A CERTIFICATE TO THE TRADE UNION WITH RESPECT TO A UNIT OF EMPLOYEES DEFINED AS "ALL EMPLOYEES OF RENFREW TOOL LTD. AT RENFREW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF". RENFREW TOOL LTD. AND THE TRADE UNION MET AND BARGAINED AND A CONCILIATION OFFICER WAS APPOINTED ON APRIL 30, 1971. ON FEBRUARY 25, 1972, THE MINISTER OF LABOUR INFORMED THE PARTIES THAT HE HAD DECIDED NOT TO APPOINT A BOARD OF CONCILIATION IN REFERENCE TO THE DISPUTE BETWEEN THEM.
4. THE TRADE UNION AND RENFREW TOOL LTD. DID NOT SIGN A COLLECTIVE AGREEMENT.
5. HAVING REGARD TO THE EVIDENCE BEFORE IT, THE BOARD FINDS THAT A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 55(1) OF THE LABOUR RELATIONS ACT OCCURRED FROM RENFREW TOOL LTD. TO RENFREW TOOL (1970) LIMITED AFTER THE DATE OF CERTIFICATION REFERRED TO IN PARAGRAPH THREE HEREIN.
6. THE BOARD FURTHER FINDS THAT EFFECTIVE SEPTEMBER 9, 1971, THE NAME OF RENFREW TOOL (1970) LIMITED WAS CHANGED TO NORTH AMERICAN VALVE & MANUFACTURING CORPORATION LIMITED. THE FACT THAT THE PURCHASER OF A BUSINESS HAS CHANGED ITS NAME BY MEANS OF A RESOLUTION AMENDING ITS ARTICLES OF INCORPORATION DOES NOT AFFECT THE OBLIGATIONS OF SUCH PURCHASER UNDER THE LABOUR RELATIONS ACT.
7. ON JANUARY 14, 1972, THE TRADE UNION GAVE NORTH AMERICAN VALVE & MANUFACTURING CORPORATION LIMITED WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT. ON FEBRUARY 15, 1972, THE TRADE UNION REQUESTED THE MINISTER OF LABOUR TO APPOINT A CONCILIATION OFFICER.
8. HAVING REGARD TO THE PROVISIONS OF SECTION 55(3) OF THE LABOUR RELATIONS ACT, THE TRADE UNION IS ENTITLED TO GIVE WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE

AGREEMENT WITH NORTH AMERICAN VALVE & MANUFACTURING CORPORATION LIMITED. SUCH NOTICE HAS THE SAME EFFECT AS A NOTICE UNDER SECTION 13 OF THE LABOUR RELATIONS ACT.

9. IN THE LIGHT OF THE FOREGOING AND TO SECTION 15 OF THE LABOUR RELATIONS ACT, THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER OF LABOUR IS THAT THE MINISTER OF LABOUR HAS THE AUTHORITY TO APPOINT A CONCILIATION OFFICER.

1656-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) v. THE CORPORATION OF THE TOWNSHIP OF KING (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: J. A. RYDER FOR THE COMPLAINANT A. J. CLARK, Q.C. AND H. G. ROSE FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 11, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT EARL HOOVER WAS DEALT BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 58(A) OF THE ACT. SECTION 58(A) PROVIDES:

58. NO EMPLOYER, EMPLOYERS' ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION,

(A) SHALL REFUSE TO EMPLOY OR TO CONTINUE TO EMPLOY A PERSON, OR DISCRIMINATE AGAINST A PERSON IN REGARD TO EMPLOYMENT OR ANY TERM OR CONDITION OF EMPLOYMENT BECAUSE THE PERSON WAS OR IS A MEMBER OF A TRADE UNION OR WAS OR IS EXERCISING ANY OTHER RIGHTS UNDER THIS ACT;

2. THE COMPLAINANT ALSO COMPLAINS THAT THE RESPONDENT HAS VIOLATED SECTIONS 56 AND 59(1) OF THE ACT BY ALLEGEDLY CAUSING WORK SAID TO HAVE BEEN PERFORMED UNDER THE CLASSIFICATION ASSISTANT ROAD SUPERINTENDENT TO BE DONE BY PERSONS TREATED BY THE RESPONDENT AS BEING EXCLUDED FROM THE BARGAINING UNIT. SECTION 56 READS:

56. NO EMPLOYER OR EMPLOYERS' ORGANIZATION AND NO PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION SHALL PARTICIPATE IN OR INTERFERE WITH THE FORMATION, SELECTION OR ADMINISTRATION OF A TRADE UNION OR THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION

OR CONTRIBUTE FINANCIAL OR OTHER SUPPORT TO A TRADE UNION, BUT NOTHING IN THIS SECTION SHALL BE DEEMED TO DEPRIVE AN EMPLOYER OF HIS FREEDOM TO EXPRESS HIS VIEWS SO LONG AS HE DOES NOT USE COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE.

SECTION 59(1) READS:

59. NO EMPLOYER, EMPLOYERS' ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION SHALL, SO LONG AS A TRADE UNION CONTINUES TO BE ENTITLED TO REPRESENT THE EMPLOYEES IN A BARGAINING UNIT, BARGAIN WITH OR ENTER INTO A COLLECTIVE AGREEMENT WITH ANY PERSON OR ANOTHER TRADE UNION OR A COUNCIL OF TRADE UNIONS ON BEHALF OF OR PURPORTING, DESIGNED OR INTENDED TO BE BINDING UPON THE EMPLOYEES IN THE BARGAINING UNIT OR ANY OF THEM.

3. ON THE BASIS OF THE WHOLE OF THE EVIDENCE AND HAVING PARTICULAR REGARD TO THE FACT THAT THE ACTIONS OF THE RESPONDENT CONCERNING WHICH THE COMPLAINTS ARE MADE, TOOK PLACE DURING AND IMMEDIATELY FOLLOWING A STRIKE BY THE COMPLAINANT IN WHICH ALL EMPLOYEES TOOK PART - THE MANNER IN WHICH THE STRIKE CAME TO AN END AND THE REORGANIZATION OF THE MAINTENANCE DEPARTMENT, THE BOARD FINDS THAT THE COMPLAINANT HAS NOT ESTABLISHED THAT THE RESPONDENT CONTRAVENED THE PROVISIONS OF THE LABOUR RELATIONS ACT AS ALLEGED BY THE COMPLAINANT.

4. THE COMPLAINT IS ACCORDINGLY DISMISSED.

2001-72-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) V. CONSOLIDATED MAINTENANCE SERVICES LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS A. MAIN AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: L. McLACHLAN AND J. ALMEIDA FOR THE COMPLAINANT; T. G. HEINTZMAN AND F. LESSNER FOR THE RESPONDENT.

DECISION OF THE BOARD:

JULY 11, 1972.

1. THIS IS A COMPLAINT MADE UNDER SECTION 79 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT COMPLAINS THAT THE THREE NAMED GRIEVORS, ARMANDO CRUZ, DEOLINDA CRUZ AND VICTOR BAPTISTA WERE DEALT WITH BY THE RESPONDENT CONTRARY TO SECTIONS 3, 56, 58(c), 61, 63(2) AND 70(2) OF THE LABOUR RELATIONS ACT.

2. AT THE HEARING THE COMPLAINANT STATED THAT IT WISHED TO WITHDRAW THE COMPLAINT IN SO FAR AS IT RELATED TO VICTOR BAPTISTA. HAVING REGARD TO THE STAGE AT WHICH THIS REQUEST WAS MADE, THE COMPLAINT IN SO FAR AS IT RELATES TO VICTOR BAPTISTA IS DISMISSED.

3. THE EVIDENCE ESTABLISHES THAT ARMANDO AND DEOLINDA CRUZ ARE HUSBAND AND WIFE AND THAT THEY HAD BEEN EMPLOYED BY THE RESPONDENT AT ITS OPERATIONS AT THE T. EATON COMPANY'S PREMISES ON COLLEGE STREET IN TORONTO IN APRIL 1972. THE T. EATON COMPANY INSTITUTED A POLICY AT ABOUT THIS TIME WHEREBY THE RESPONDENT WAS UNABLE TO CONTINUE TO EMPLOY A MARRIED COUPLE AT THE SAME PREMISES OF THE T. EATON COMPANY.

4. WITH A VIEW TO COMPLYING WITH THE POLICY THE RESPONDENT INFORMED MR. AND MRS. CRUZ AND OTHER MARRIED COUPLES WHO WERE WORKING FOR IT AT COLLEGE STREET THAT THEY WOULD HAVE TO WORK FOR THE RESPONDENT AT SEPARATE LOCATIONS. THESE TWO GRIEVORS AND THE OTHER MARRIED COUPLES WERE PERMITTED TO CHOOSE WHETHER THE HUSBAND OR THE WIFE WOULD REMAIN AT COLLEGE STREET AND WHICH SPOUSE WOULD CONTINUE TO WORK AT ANOTHER LOCATION FOR THE RESPONDENT.

5. THE TWO GRIEVORS DISCUSSED THE MATTER AND THEY THEMSELVES DECIDED THAT MR. CRUZ WOULD REMAIN AT COLLEGE STREET AND THAT MRS. CRUZ WOULD WORK AT AN UNSPECIFIED NEW LOCATION FOR THE RESPONDENT. MRS. CRUZ DID NOT INDICATE A PREFERENCE WITH RESPECT TO THE NEW LOCATION WHERE SHE WOULD BE WORKING FOR THE RESPONDENT. THE RESPONDENT ASSIGNED HER TO WORK AT ONTARIO PLACE. WHEN THE TIME ARRIVED FOR MRS. CRUZ TO REPORT TO WORK AT ONTARIO PLACE SHE FAILED TO REPORT TO WORK THERE.

6. MRS. CRUZ WAS REQUIRED TO WORK ON THE NIGHT SHIFT AT ONTARIO PLACE (AS SHE WAS AT COLLEGE STREET) AND ELECTED NOT TO REPORT FOR WORK BECAUSE IT MEANT TRAVELLING ALONE AT NIGHT TO ONTARIO PLACE. SOME TWO TO THREE WEEKS AFTER THE DATE WHEN SHE WAS INSTRUCTED TO REPORT TO WORK AT ONTARIO PLACE, SHE WENT THERE IN THE COMPANY OF JOSE ALMEIDA, WHO SPEAKS BOTH ENGLISH AND PORTUGUESE, AND INQUIRED AFTER EMPLOYMENT FOR HERSELF. AT THIS TIME CERTAIN EMPLOYEES OF THE RESPONDENT WERE SUBJECTED TO OBSCENE LANGUAGE BY MR. ALMEIDA. MRS. CRUZ WAS UNABLE TO SECURE EMPLOYMENT WITH THE RESPONDENT.

7. AFTER MRS. CRUZ WAS TRANSFERRED FROM COLLEGE STREET, MR. CRUZ WAS THEN SUBSEQUENTLY TRANSFERRED FROM COLLEGE STREET TO QUEEN'S PARK. THE RATE OF PAY AT QUEEN'S PARK WAS LOWER THAN AT COLLEGE STREET. HOWEVER, MR. CRUZ RECEIVED A CHEQUE FROM THE RESPONDENT TO MAKE UP THE DIFFERENCE IN HIS EARNINGS AS A RESULT OF HIS MOVE TO QUEEN'S PARK. IN ADDITION, MR. CRUZ WAS GIVEN WORK AFTER HIS MOVE FROM COLLEGE STREET WHICH WAS ALLEGED TO BE OVERTIME WORK BY THE RESPONDENT.

8. THE COMPLAINANT STRESSED CERTAIN CONVERSATIONS WHICH OCCURED IN AN ELEVATOR AT THE COLLEGE STREET LOCATION ON APRIL 19, 1972. MR. MELO, AN ALLEGED SUPERVISOR FOR THE RESPONDENT, MADE CERTAIN WARNING

REMARKS TO CERTAIN PERSONS IN THE ELEVATOR ABOUT A UNION TRYING TO GET INTO COLLEGE STREET. HE ALSO MADE SOME REMARKS THAT PERSONS WHO WERE TOURISTS AND WORKING FOR THE RESPONDENT WOULD BE RETURNED TO THEIR HOMELANDS. IN ADDITION, HE MENTIONED THAT A TEN CENT PER HOUR INCREASE WOULD BE PUT INTO EFFECT IN A WEEK'S TIME. THESE REMARKS OF MR. MELO WERE MADE TO THE PERSONS IN THE ELEVATOR AND WERE NOT MADE SPECIFICALLY TO MR. AND MRS. CRUZ.

9. AT THE TIME OF THE CONVERSATIONS REFERRED TO IN PARAGRAPH EIGHT HEREIN, MR. AND MRS. CRUZ WERE NOT MEMBERS OF THE CANADIAN UNION OF GENERAL EMPLOYEES. THE EVIDENCE DISCLOSES THAT THEY DID NOT BECOME MEMBERS OF THIS UNION UNTIL AFTER THEY WERE TOLD OF THE RULE OF THE T. EATON COMPANY RESPECTING HUSBANDS AND WIVES. THERE WAS NO SUGGESTION THAT THE RESPONDENT WAS AWARE THAT MR. AND MRS. CRUZ HAD BECOME MEMBERS OF ANY TRADE UNION.

10. ON THE BASIS OF ALL THE EVIDENCE BEFORE IT, THE BOARD FINDS THAT THE COMPLAINANT HAS FAILED TO SATISFY IT THAT THE TRANSFERS OF MR. AND MRS. CRUZ FROM THE T. EATON COMPANY'S COLLEGE STREET PREMISES VIOLATED ANY PROVISION OF THE LABOUR RELATIONS ACT OR THAT IN NOT REHIRING MRS. CRUZ THE RESPONDENT HAS VIOLATED ANY PROVISION OF THE LABOUR RELATIONS ACT.

11. IN THE RESULT, THE COMPLAINT WHICH RELATES TO ARMANDO AND DECLINDA CRUZ IS ALSO DISMISSED.

1413-71-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF BLACK RIVER - MATHESON (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER O. HODGES: JULY 12, 1972.

1. PURSUANT TO THE DECISION OF THE BOARD IN THIS MATTER DATED JUNE 2, 1972, THE EXAMINER CONVENED A MEETING OF THE PARTIES WHICH CULMINATED IN THE REPORT OF THE EXAMINER HEREIN DATED JUNE 27, 1972.

2. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE SAID REPORT OF THE EXAMINER, THE BOARD FINDS THAT MICHAEL MULLEN, CLASSIFIED BY THE RESPONDENT AS DEPUTY CLERK TREASURER, IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY IS EXCLUDED FROM THE BARGAINING UNIT AS DEFINED IN THE ORIGINAL DECISION OF THE BOARD IN THIS MATTER DATED JANUARY 18, 1972.

DECISION OF BOARD MEMBER H.F. IRWIN: JULY 12, 1972.

1. THIS IS A REFERRAL TO THE BOARD UNDER SECTION 95(2) OF THE LABOUR RELATIONS ACT WHICH READS AS FOLLOWS:

"(2) IF, IN THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT, A QUESTION ARISES AS TO WHETHER A PERSON IS AN EMPLOYEE OR AS TO WHETHER A PERSON IS A GUARD, THE QUESTION MAY BE REFERRED TO THE BOARD AND THE DECISION OF THE BOARD THEREON IS FINAL AND CONCLUSIVE FOR ALL PURPOSES."

2. MICHAEL MULLEN WAS FIRST EMPLOYED BY THE RESPONDENT MUNICIPALITY ON MAY 1ST, 1972 AS DEPUTY CLERK TREASURER. HE WAS ADVISED HE WAS TO SUPERVISE THE OFFICE STAFF CONSISTING OF THREE FEMALE EMPLOYEES. HE WAS FURTHER ADVISED THAT IF HE HAD ANY PROBLEMS WITH THESE EMPLOYEES HE WAS TO REPORT THE PROBLEMS TO THE CLERK TREASURER. HIS DUTIES HAVE NOT CHANGED SINCE THE COMMENCEMENT OF HIS EMPLOYMENT WITH THE RESPONDENT.

3. THE ISSUE BEFORE THE BOARD IS WHETHER OR NOT MICHAEL MULLEN IN HIS CAPACITY OF DEPUTY CLERK TREASURER IS OR IS NOT AN EMPLOYEE WITHIN THE MEANING OF SECTION 1(3)(b) OF THE LABOUR RELATIONS ACT WHICH READS AS FOLLOWS:

"(3) SUBJECT TO SECTION 80, FOR THE PURPOSES OF THIS ACT, NO PERSON SHALL BE DEEMED TO BE AN EMPLOYEE,

(b) WHO, IN THE OPINION OF THE BOARD, EXERCISES MANAGERIAL FUNCTIONS OR IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS."

4. ON THE BASIS OF THE REPORT OF THE EXAMINER, THE BOARD MUST DECIDE IF THE DEPUTY CLERK TREASURER EXERCISES MANAGERIAL FUNCTIONS OR IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS.

RE: MANAGEMENT FUNCTIONS -

IN THE COCHRANE NURSING HOME LIMITED CASE, BOARD FILE NO. 18024-70-R, THE BOARD QUOTED EXCERPTS FROM SEVERAL CASES TO EMPHASIZE THE HIGH STANDARDS IT REQUIRES TO FIND THAT A PERSON EXERCISES MANAGERIAL FUNCTIONS. AT PARAGRAPH 6, THE BOARD QUOTES FROM THE AJAX AND PICKERING GENERAL HOSPITAL CASE, OLRB M.R. FEBRUARY 1970, P. 1283. AT PAGE 1289, THE BOARD STATED:

"....THE WORD "SUPERVISE" ON THE FACE OF MANY EXAMINER'S REPORTS HAS BECOME AN EPITHET WHICH RELIEVES THE PARTIES OF A PENETRATING EXAMINATION OF ACTUAL DUTIES AND RESPONSIBILITIES. THE WORDS "SUPERVISE", "SUPERVISOR" AND VARIATIONS OF THESE WORDS

DO NOT OF NECESSITY CHARACTERIZE THE PERSON
EXAMINED AS PERFORMING MANAGERIAL FUNCTIONS."

AT PARAGRAPH 10 OF THE COCHRANE NURSING HOME LIMITED DECISION (SUPRA), THE BOARD QUOTES THE FOLLOWING EXCERPT FROM THE LAKEHEAD BOARD OF EDUCATION CASE, OLRB M.R. FEBRUARY, 1970, P. 1331, WHERE AT PAGE 1332, IT IS STATED:

"THE BOARD IN A NUMBER OF RECENT DECISIONS HAS RECOGNIZED THE GROWING COMPLEXITY OF MANAGEMENT STRUCTURES, THE DIFFUSION OF THE LINES OF AUTHORITY AND THE DIVERGENT ELEMENTS THAT GO INTO THE DECISION MAKING PROCESS. THE BOARD, ACCORDINGLY, IN MAKING SUCH DETERMINATION ENDEAVOURS TO DISTINGUISH BETWEEN PERSONS WHO TRULY EXERCISE INDEPENDENT DISCRETION OR ASSERT REAL AUTHORITY, AS OPPOSED TO THOSE WHO MERELY IMPLEMENT DECISIONS WITHIN A FRAMEWORK DECIDED BY OTHERS OR WHOSE INDEPENDENT DISCRETION IS LIMITED TO PRE-DETERMINED CIRCUMSCRIBED AREAS. THE BOARD IS COGNIZANT OF THE FACT ALSO THAT MANAGEMENT TODAY GENERALLY NEEDS THE ASSISTANCE AND ADVICE OF RESPONSIBLE AND HIGHLY QUALIFIED INDIVIDUALS IN THE FIELDS OF THEIR PARTICULAR KNOWLEDGE. THE FACT THAT SUCH ASSISTANCE OR ADVICE IS SOUGHT AND IS ACCEPTED OR TAKEN INTO ACCOUNT BY MANAGEMENT DOES NOT MEAN THAT SUCH PERSONS EXERCISE MANAGERIAL FUNCTIONS IN THEIR OWN RIGHT. IN ALL CASES, THE BOARD MUST EVALUATE THE TOTALITY OF EACH PERSON'S JOB FUNCTIONS IN DECIDING WHETHER THE PERSON CONCERNED, IN AN INTRINSIC SENSE, EXERCISES MANAGERIAL AUTHORITY (SEE THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE, 1969 AUG. OLRB M.R. P. 669 AND AJAX AND PICKERING GENERAL HOSPITAL CASE, (SUPRA))."

AT PARAGRAPH 11 IN THE COCHRANE DECISION, THE BOARD QUOTES A FURTHER PASSAGE FROM THE AJAX AND PICKERING GENERAL HOSPITAL CASE (SUPRA) WHEREIN AT PAGE 1286, IT IS STATED:

"...THE LABOUR RELATIONS ACT MUST BE INTERPRETED AS AN ACT IN THE PUBLIC INTEREST WHICH IS TO PROVIDE COLLECTIVE BARGAINING FOR EMPLOYEES, AND IT IS THEREFORE INCUMBENT ON PERSONS WHO SEEK TO EXCLUDE EMPLOYEES FROM THE SCHEME OF THE ACT TO PROVE THAT SUCH PERSONS EXERCISE MANAGERIAL FUNCTIONS. SEE BAKERY & CONFECTIONERY WORKERS I.U.A. V. SALMI 56 D.L.R. (2d) 193."

CONTENTS OF THE REPORT OF THE EXAMINER IN THE INSTANT CASE. SO FAR AS SUPERVISING THE THREE EMPLOYEES ARE CONCERNED, AT PARAGRAPH 24 IT IS STATED THAT MR. MULLEN SPENDS APPROXIMATELY 1 1/2 HOURS PER DAY ON SUPERVISORY DUTIES. HE WAS NOT TOLD TO DIRECT THE EMPLOYEES IN THEIR DAILY WORK (PARAGRAPH 23). HE DOES NOT SET RATES OF PAY. HE COULD RECOMMEND RATES OF PAY TO THE CLERK TREASURER BUT HAS NOT DONE SO (PARAGRAPH 10). THERE IS NO EVIDENCE THAT SUCH RECOMMENDATIONS, IF MADE, WOULD BE ACTED UPON FAVOURABLY. WHILE HE MAY ASSIGN OVERTIME WORK, HE HAS NOT DONE SO (PARAGRAPH 15). HE CAN GRANT AN EMPLOYEE TIME-OFF ONLY WITHIN A VERY LIMITED AREA (PARAGRAPH 17). OTHER DUTIES INCLUDE CO-SIGNING CHEQUES (PARAGRAPH 11) RE THE PAYROLL AND ACCOUNTS PAYABLE. HE ALSO ATTENDS MEETINGS OF THE COUNCIL AND TAKES MINUTES OF THE PROCEEDINGS IN THE ABSENCE OF THE CLERK TREASURER.

6. HAVING REGARD TO ALL THE DUTIES AND RESPONSIBILITIES OF MR. MULLEN AS APPLIED TO THE STANDARDS SET BY THE BOARD, I HAVE NO HESITANCY IN FINDING THAT MR. MULLEN DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

RE: EMPLOYMENT IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS

AT PARAGRAPH 13 OF THE REPORT OF THE EXAMINER, IT IS STATED THAT MR. MULLEN HAS BEEN INVOLVED IN THE CURRENT NEGOTIATIONS BETWEEN THE APPLICANT AND THE RESPONDENT. HE HAD REPLACED THE CLERK TREASURER AT ONE OF THE MEETINGS AND AT PARAGRAPH 14 THAT HE ACTUALLY PARTICIPATED IN THE DISCUSSIONS AT THE BARGAINING TABLE AS A REPRESENTATIVE OF THE RESPONDENT EMPLOYER. THIS IS COGENT EVIDENCE THAT INTER ALIA MR. MULLEN IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. CONSEQUENTLY, I MUST FIND THAT MR. MULLEN IS NOT TO BE DEEMED TO BE AN EMPLOYEE FOR THE PURPOSES OF THE ACT AND IS EXCLUDED FROM THE BARGAINING UNIT.

357-71-R: NURSES' ASSOCIATION MACASSA LODGE (APPLICANT) V. THE CORPORATION OF THE CITY OF HAMILTON (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: D. F. HERSEY AND MISS S. HICKS FOR THE APPLICANT; E. L. STRINGER, Q.C. AND J. LONGWORTH FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN R. A. FURNESS AND BOARD MEMBER E. BOYER: JULY 12, 1972.

1. WE HAVE CONSIDERED THE EVIDENCE CONTAINED IN THE REPORT FOR THE EXAMINER DATED JANUARY 4, 1972, THE EVIDENCE CONTAINED IN THE SUPPLEMENTARY REPORT OF THE EXAMINER DATED JANUARY 14, 1972, AND THE REPRESENTATIONS OF THE PARTIES AT THE HEARING IN THIS MATTER.

2. THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF A BARGAINING UNIT OF ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE EMPLOYER AT MACASSA LODGE, HAMILTON, SAVE AND EXCEPT DIRECTOR OF NURSING AND THOSE ABOVE THIS CLASSIFICATION. THE RESPONDENT TAKES THE POSITION THAT THERE IS NO APPROPRIATE BARGAINING UNIT IN THIS APPLICATION BECAUSE ALL OF ITS REGISTERED AND GRADUATE NURSES AT MACASSA LODGE ARE NURSING SUPERVISORS WHO EXERCISE MANAGERIAL FUNCTIONS AND ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

3. THE EVIDENCE BEFORE THE BOARD ESTABLISHES THAT NONE OF THE NURSING SUPERVISORS AT THE RESPONDENT'S MACASSA LODGE IN HAMILTON HAS EITHER THE RIGHT TO HIRE OR THE RIGHT TO DISCHARGE EMPLOYEES. SIMILARLY, NONE OF THESE PERSONS HAS THE RIGHT TO RECOMMEND THAT A PERSON OUGHT TO BE HIRED BY THE RESPONDENT. WITH RESPECT TO THE QUESTION OF RECOMMENDING THE DISMISSAL OF AN EMPLOYEE, ONLY ONE OF THE NURSING SUPERVISORS EXAMINED BY THE EXAMINER STATED THAT SHE COULD RECOMMEND THE DISCHARGE OF AN EMPLOYEE. HOWEVER, IN CONNECTION WITH MUCH OF THE EXAMINER'S REPORT, THERE APPEARED TO BE DIFFERENT EVIDENCE CONCERNING WHAT EACH OF THE NURSING SUPERVISORS THOUGHT THEIR POWERS WERE. COUNSEL FOR THE RESPONDENT CONCEDED THAT IN THE VIEW OF THE RESPONDENT ALL OF ITS NURSING SUPERVISORS AT MACASSA LODGE HAD THE SAME AUTHORITY AND THAT IT WAS DIFFICULT TO RECONCILE PORTIONS OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER IN THE LIGHT OF THE VARYING INTERPRETATIONS WHICH SOME OF THE NURSING SUPERVISORS GAVE TO SOME OF THEIR DUTIES. IN SEVERAL INSTANCES IN THE REPORT OF THE EXAMINER, SOME NURSING SUPERVISORS INDICATED BY THEIR EVIDENCE THAT THEY CONSIDERED THEY POSSESSED AUTHORITY WHICH WAS AT VARIANCE WITH THE AUTHORITY OF THEIR FELLOW NURSING SUPERVISORS.

4. THE LACK OF CERTAINTY BY THE NURSING SUPERVISORS CONCERNING THE EXTENT OF THEIR AUTHORITY WITH RESPECT TO THE ORDERLIES, REGISTERED NURSING ASSISTANTS AND PRACTICAL NURSES WHO WORKED WITH THEM IS EXEMPLIFIED BY THE EVIDENCE OF MRS. CREIGHTON WHO STATED THAT WHEN SHE WAS HIRED SHE WAS NOT TOLD WHAT HER DUTIES WOULD BE. READING THE REPORT AS A WHOLE IT APPEARS THAT THE NURSING SUPERVISORS AT MACASSA LODGE RATHER THAN FORMALLY HAVING THEIR AUTHORITY IN RELATION TO THE ORDERLIES, REGISTERED NURSING ASSISTANTS AND PRACTICAL NURSES ESTABLISHED BY THE RESPONDENT, INSTEAD SEEMED TO HAVE GLEANED THEIR PERCEPTION OF THEIR ROLE WITH REGARD TO THESE OTHER EMPLOYEES OF THE RESPONDENT BY USAGE AND EXPERIENCE ON THE JOB. IT MAY WELL BE THAT THE VARIATION IN AUTHORITY WHICH THE NURSING SUPERVISORS FEEL THEY POSSESS IS IN ITSELF A FUNCTION OF THE PERSONALITY OF THE INDIVIDUAL CONCERNED. A JOB DESCRIPTION FOR NURSING SUPERVISORS WAS REVISED BY THE RESPONDENT ON MARCH 8, 1970. IN THIS JOB DESCRIPTION OF THE NURSING SUPERVISOR, THE JOB SUMMARY STATES THAT THE NURSING SUPERVISOR IS TO "ASSIGN DUTIES AND SUPERVISE ALL NURSING PERSONNEL...." THE VERB 'SUPERVISE' STANDING BY ITSELF DOES NOT, OF COURSE, INDICATE WHETHER THE NATURE OF THE SUPERVISION CALLS FOR INDEPENDENT JUDGMENT OF A MANAGERIAL NATURE OR WHETHER THE NATURE OF THE SUPERVISION IS TO BE WITHIN AREAS CLOSELY CONTROLLED BY THE DIRECTOR OF NURSING OR THE ADMINISTRATOR OF MACASSA LODGE.

5. THE NURSING SUPERVISORS DO ORALLY REPRIMAND THE EMPLOYEES WHO WORK WITH THEM AND DO REPORT DEFICIENCIES IN THEIR WORK TO THE DIRECTOR OF NURSING. SIMILARLY, ALTHOUGH THE NURSING SUPERVISORS DO MAKE REPORTS ON EMPLOYEES WHO WORK WITH THEM, VERY LITTLE APPEARS TO TURN ON THESE REPORTS. THE DISCRETION EXERCISED BY THE DIRECTOR OF NURSING AND THE ADMINISTRATOR APPEAR TO BE DETERMINATIVE OF THE RESPONDENT'S DECISION TO DISCIPLINE OR NOT DISCIPLINE THE ORDERLIES, REGISTERED NURSING ASSISTANTS AND PRACTICAL NURSES. THE NURSING SUPERVISORS HAVE THE RESPONSIBILITY FOR ASSIGNING WORK TO EMPLOYEES WHO WORK WITH THEM. HOWEVER, THEY HAVE NO AUTHORITY TO CHANGE DAYS OFF FOR THESE EMPLOYEES AND WITH RESPECT TO THE QUESTION OF GRANTING TIME OFF IT IS QUITE CLEAR THAT ONLY IN CASES OF ILLNESS, WHEN THE NURSING SUPERVISORS IN REALITY HAVE VERY LITTLE CHOICE, MAY THE NURSING SUPERVISORS PERMIT AN EMPLOYEE TO GO HOME.

6. THE QUESTION OF WHETHER THE NURSING SUPERVISORS HAVE THE AUTHORITY TO SEND EMPLOYEES HOME AS A DISCIPLINARY MEASURE IS CLOUDED BY THE FACT THAT SOME OF THE NURSING SUPERVISORS FELT THAT THEY DID NOT HAVE THE AUTHORITY TO SEND AN EMPLOYEE HOME, WHEREAS OTHER NURSING SUPERVISORS HAD, IN FACT, SENT TEMPORARY EMPLOYEES HOME FOR REASONS OF DISCIPLINE. THE CONFUSION OF THE NURSING SUPERVISORS WITH RESPECT TO THEIR AUTHORITY IS EXEMPLIFIED BY THE TESTIMONY OF MRS. EISMONTAS, A NURSING SUPERVISOR, WHO ALLOWED AN EMPLOYEE TO GO HOME EARLY ON HER OWN AUTHORITY AND THEN ADDED THAT THERE WERE "NO REPERCUSSIONS". THIS, IN OUR OPINION, INDICATES THAT THE NURSING SUPERVISOR CONCERNED WAS NOT AT ALL SURE OF WHETHER SHE, IN FACT, HAD THE AUTHORITY TO DO SUCH AN ACT OR WHETHER SHE WOULD REQUIRE SOME APPROVAL OR RATIFICATION OF HER ACT BY THE DIRECTOR OF NURSING.

7. THE NURSING SUPERVISORS HAVE NO AUTHORITY TO RECOMMEND SALARY INCREASES, DO NOT HAVE ACCESS TO CONFIDENTIAL MATTERS IN RELATION TO LABOUR RELATIONS AND DO NOT HAVE ACCESS TO THE PERSONNEL FILES OF THE EMPLOYEES WHO WORK WITH THEM. NURSING SUPERVISORS DO ATTEND MEETINGS WITH THE DIRECTOR OF NURSING WHERE PERSONNEL MATTERS ARE DISCUSSED. HOWEVER, IT IS APPARENT FROM EXHIBIT 4 FILED WITH THE BOARD THAT THESE MEETINGS, IN FACT, SERVED TO EMPHASIZE THE NURSING SUPERVISORS' ROLE AS ONE OF TAKING DIRECTION FROM THE DIRECTOR OF NURSING AND ACTING AS A CONDUIT IN CONNECTION WITH DISCIPLINARY MATTERS.

8. IT WAS ARGUED BEFORE THE BOARD THAT THE NURSING SUPERVISORS PARTICIPATE IN THE FIRST STEP OF THE GRIEVANCE PROCEDURE PURSUANT TO A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF PUBLIC EMPLOYEES. A CLOSER EXAMINATION OF THE EVIDENCE BEFORE THE BOARD REVEALS THAT THE NURSING SUPERVISORS IN SOME CASES DO NOT EVEN RECEIVE THE INITIAL GRIEVANCE WHICH IS FILED BY AN EMPLOYEE AND THAT OTHER NURSING SUPERVISORS RECEIVED THE GRIEVANCE IN A SEALED ENVELOPE AND PASSED IT ON TO THE DIRECTOR OF NURSING WITHOUT OPENING IT. WHILE IT APPEARS THAT THE NURSING SUPERVISORS TAKE PART IN THE RESOLUTION OF SOME OF THE GRIEVANCES

FILED BY THE EMPLOYEES, A CLOSER EXAMINATION IN THEIR ROLE INDICATES THAT THEY ARE RELIED UPON BY THE DIRECTOR OF NURSING AND THE ADMINISTRATOR EITHER AS A SOURCE OF INFORMATION CONCERNING THE INCIDENT WHICH LED UP TO THE GRIEVANCE OR AS WITNESSES FOR THE RESPONDENT IN ANY POTENTIAL ARBITRATION PROCEEDINGS.

9. IN CONSIDERING THE EVIDENCE AS A WHOLE IT IS CLEAR THAT THE NURSING SUPERVISORS MAKE SUGGESTIONS RATHER THAN DECISIONS AND THAT THEY DO NOT HAVE AUTHORITY TO MAKE INDEPENDENT DECISIONS EXCEPT IN STRICTLY LIMITED AND CLOSELY CONTROLLED AREAS. THEIR SUPERVISORY FUNCTIONS ARE ESSENTIALLY RELATED TO THEIR PROFESSIONAL TRAINING, TECHNICAL SKILL AND EXPERIENCE RATHER THAN TO MATTERS OF A MANAGERIAL NATURE. IN SOME CIRCUMSTANCES, AS TYPIFIED BY EXHIBIT 4 FILED WITH THE BOARD, THE NURSING SUPERVISORS ACT AS A CONDUIT FOR THE INSTRUCTIONS OF THE DIRECTOR OF NURSING. REFERENCE IS MADE TO THE ESSEX HEALTH ASSOCIATION CASE, OLRB REP. NOVEMBER 1970, P. 824.

10. WITH RESPECT TO THE EVALUATION REPORTS MADE BY THE NURSING SUPERVISORS CONCERNING THE EMPLOYEES WHO WORK WITH THEM, IT IS INTERESTING TO NOTE THAT THE NURSING SUPERVISORS DO NOT INITIATE THESE FORMS BUT RATHER RESPOND TO INQUIRIES FROM THE DIRECTOR OF NURSING. HAVING REGARD TO ALL OF THE EVIDENCE CONCERNING THE FUNCTION OF THE NURSING SUPERVISOR IN CONNECTION WITH THE EVALUATION REPORTS, IT IS QUITE CLEAR THAT THIS SYSTEM OF EVALUATION IS MECHANICAL IN NATURE AND THAT THE NURSING SUPERVISOR MAKES NO FINAL DECISION WITH RESPECT TO THESE REPORTS OR THE EFFECT OF THESE REPORTS ON THE EMPLOYEE IN QUESTION. REFERENCE IS MADE TO THE AJAX & PICKERING GENERAL HOSPITAL CASE, OLRB REP. FEBRUARY 1970, P. 1285.

11. IN DEALING WITH THE SUPERVISORY ASPECT OF MANAGEMENT FUNCTIONS, THE ELEMENT OF CONTROL OF THE EMPLOYEES ALLEGED TO BE SUPERVISED BY THE NURSING SUPERVISORS IS OF PRIMARY SIGNIFICANCE. WHERE THERE IS SOME REAL EVIDENCE OF CONTROL OF THESE EMPLOYEES, ATTENDANCE AT MEETINGS WITH THE DIRECTOR OF NURSING MAY BE OF SOME SIGNIFICANCE WITH RESPECT TO A FINDING THAT THESE NURSING SUPERVISORS EXERCISE MANAGERIAL FUNCTIONS. HOWEVER, A CONTRARY INDICATION IS SHOWN WHERE THE EVIDENCE OF CONTROL IS AS MARGINAL AND AS CLOSELY CIRCUMSCRIBED AS IN THE CIRCUMSTANCES OF THIS APPLICATION.

12. HAVING REGARD TO ALL OF THE EVIDENCE BEFORE US, WE ARE SATISFIED THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION, NAMELY, THE NURSING SUPERVISORS NEITHER EXERCISE MANAGERIAL FUNCTIONS NOR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

13. HAVING REGARD TO THE FOREGOING, WE FURTHER FIND THAT ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT ITS MACASSA LODGE IN HAMILTON, SAVE AND EXCEPT THE DIRECTOR OF NURSING AND PERSONS ABOVE THE RANK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

14. WE ARE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE US THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 10, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

15. IN THE RESULT, THEREFORE, A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER F. W. MURRAY: JULY 12, 1972.

1. I DISSENT.

2. THE EVIDENCE GIVEN BY THE INDIVIDUAL EMPLOYEES CERTAINLY INDICATES THAT THERE IS SOME CONFUSION AS TO WHETHER OR NOT THEY HAVE THE AUTHORITY TO EXERCISE MANAGERIAL FUNCTION. WE HAVE ON THE ONE HAND WITNESSES STATING THAT THEY INDEPENDENTLY EVALUATE THOSE PERSONS THAT THEY ARE SUPERVISING AND ON THE OTHER HAND, WE HAVE SITUATIONS WHEREIN THE WITNESSES WERE ACTING PURELY AS A CONDUIT IN THE TURNING OVER OF A GRIEVANCE TO THE DIRECTOR OF NURSES.

3. FROM THE EVIDENCE WE CAN REASONABLY ASSUME THAT THE HOSPITAL ADMINISTRATOR AND THE DIRECTOR OF NURSES DO NOT WORK ON WEEK-ENDS AND BASICALLY ARE AT THE LODGE ON THE DAY SHIFT FOR APPROXIMATELY EIGHT HOURS. THIS, IN FACT, MEANS THAT IF THE SUBJECT NURSING SUPERVISORS WERE TO CONSTITUTE EMPLOYEES WITHIN THE MEANING OF THE ACT, THE STAFF OF THE LODGE WOULD BE WITHOUT SUPERVISION FOR APPROXIMATELY 76% OF THE TOTAL TIME DURING A NORMAL WORK. IN OTHER WORDS, THE PERSONNEL IN THE LODGE WOULD BE UNDER SUPERVISION (BY THE HOSPITAL ADMINISTRATOR AND THE DIRECTOR OF NURSES) FOR ONLY ABOUT 24% OF THE TOTAL TIME.

4. AN EXAMPLE OF THE EVIDENCE OF MANAGERIAL FUNCTION CAN BE FOUND IN THE EXAMINER'S REPORT WITH RESPECT TO MRS. CHARLOTTE MERRIMAN AND PARTICULARLY WITH REFERENCE TO PARAGRAPHS 52, 53 AND 54. THESE PARAGRAPHS READ AS FOLLOWS:

"52. IN ANSWER TO QUESTIONS BY MR. STRINGER REPRESENTING THE RESPONDENT, THE WITNESS SAID SHE HAS FOURTEEN EMPLOYEES WORKING UNDER HER. SHE IS THE BOSS OVER THESE PEOPLE AND THEY LOOK TO HER FOR ORDERS AND INSTRUCTIONS. SHE SAID IF THEY DID SOMETHING WRONG SHE HAS THE AUTHORITY TO REPRIMAND THEM. SHE CAN SEND AN EMPLOYEE HOME AS A PENALTY IF SHE FEELS THAT THIS IS JUSTIFIED. SHE SAID SHE HAS HAD AN OCCASION TO SEND AN EMPLOYEE HOME AS A FORM OF PENALTY TEN MONTHS AGO.

53. THE WITNESS' OPINION IS RELIED UPON IN DETERMINING IF AN EMPLOYEE IS TO BE MADE A PERMANENT EMPLOYEE FROM A TEMPORARY EMPLOYEE.

54. THE WITNESS SAID SHE HAS BEEN GIVEN INSTRUCTIONS BY MISS WOOD, THE DIRECTOR OF NURSING, WITH RESPECT TO THE DISCIPLINING OF EMPLOYEES. SHE SAID THIS OCCURRED ABOUT FOUR MONTHS AGO AND WHILE SOME NURSES WERE NOT IN ATTENDANCE AT THIS MEETING, NOTES HAVE BEEN LEFT FOR THEM OUTLINING WHAT HAD BEEN DISCUSSED. SHE SAID SHE WAS TOLD HOW AND WHEN TO DISCIPLINE EMPLOYEES. SHE SAID AS SUPERVISOR SHE HAD BEEN ABLE TO HANDLE ANY PROBLEMS WITH RESPECT TO DISCIPLINE ON HER SHIFT. SHE SAID SHE HAS ON A COUPLE OF OCCASIONS MADE RECOMMENDATIONS TO THE DIRECTOR OF NURSING WITH RESPECT TO PROBLEMS. THESE RECOMMENDATIONS WERE DISCUSSED AND SATISFACTORILY RESOLVED."

5. THE SAME WITNESS ALSO CLEARLY STATED IN PARAGRAPH 62 THAT SHE HAS IN FACT DISCIPLINED EMPLOYEES AND SENT THEM HOME AS A DISCIPLINARY MEASURE AND THAT SHE KNOWS OF OTHER NURSING SUPERVISORS WHO HAVE DONE THE SAME.

6. IT IS ALSO CLEAR THAT SOME OF THE WITNESSES DID NOT EXERCISE THE AUTHORITY FOR REASONS KNOWN ONLY TO THEMSELVES.

7. IN THE LIGHT OF ALL OF THE EVIDENCE I WOULD HAVE FOUND THAT THE NURSING SUPERVISORS EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY SHOULD BE EXCLUDED FROM ANY BARGAINING UNIT UNDER THE SAID ACT.

1543-71-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1962 (APPLICANT) v. THE UNIVERSITY OF WESTERN ONTARIO (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS D.B. ARCHER AND J.D. BELL.

APPEARANCES AT THE HEARING: CHRIS G. PALIARE AND WATSON COOK FOR THE APPLICANT; C.G. RIGGS, W.F. TRIMBLE AND R. GONDER FOR THE RESPONDENT; JAMES PRENTICE FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: JUNE 13, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. THE APPLICANT CLAIMS A BARGAINING UNIT COMPOSED OF SECURITY GUARDS WITH CERTAIN EXCEPTIONS THAT ARE NOT HERE MATERIAL. IT BASES ITS CLAIM UNDER SECTION 11 OF THE LABOUR RELATIONS ACT. THE RESPONDENT DISPUTED THAT THE PERSONS CONCERNED WERE SECURITY GUARDS WITHIN THE MEANING OF SECTION 11 AND ACCORDINGLY AN EXAMINER WAS APPOINTED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF THE PERSONS IN ISSUE.

3. HAVING REGARD TO THE REPORT OF THE EXAMINER, DATED APRIL 14, 1972, THE BOARD FINDS THAT THE PERSONS IN ISSUE WERE SWORN TO PROTECT THE PROPERTY OF THE UNIVERSITY AND TO ENFORCE ITS RULES AND REGULATIONS. THEY PATROL THE CAMPUS, TICKET AND TOW AWAY ILLEGALLY PARKED CARS, RELIEVE PARKING LOT ATTENDANTS, CHECK THE SECURITY OF VARIOUS BUILDINGS, RECEIVE MONEY FOR FINES, ISSUE TRESPASS NOTICES, DEAL WITH EMERGENCY PROBLEMS, COLLECT MONEY AT THE PARKING GATES, INVESTIGATE THEFTS AND PREPARE REPORTS. THEY WEAR UNIFORMS WITH SHOULDER FLASHES CONTAINING THE WORD "SECURITY". THEY ARE SUPERVISED BY A HIERARCHY COMPOSED OF A CORPORAL AND SERGEANT AND SOME OF THEM OPERATE A RADIO EQUIPPED MOBILE PATROL.

4. THE PERSONS CONCERNED DO NOT CARRY ARMS. THEY BELIEVE THEY HAVE THE SAME POWERS OF ARREST AS AN ORDINARY CITIZEN AND IF THEY FIND ANYTHING UNUSUAL THEY REPORT THE MATTER TO THE POLICE OR FIRE DEPARTMENT IF NECESSARY.

5. IN OUR VIEW THE PERSONS IN ISSUE HAVE GREATER RESPONSIBILITIES THAN THE PERSONS WHO WERE FOUND TO HAVE BEEN GUARDS IN IMPERIAL LEAF TOBACCO COMPANY OF CANADA LIMITED [1969] FEB. OLRB REP. 1168. IN THAT CASE THE PERSON FOUND TO BE A GUARD DID NOT WEAR A UNIFORM OR A BADGE, WAS NOT SWORN IN AS A SPECIAL CONSTABLE AND DID NOT HAVE THE RIGHT TO ARMS. HE DID REGULAR ROUNDS, CHECKED THE BURGLARY SYSTEM, CLOSED THE DOORS AND GATES, KEPT A GENERAL WATCH ON THE PLANT AND APPROVED PARCELS THAT WERE TAKEN IN AND OUT OF THE PLANT. IF HE FOUND ANYTHING AMISS HE WOULD TELEPHONE THE POLICE.

6. THE BOARD FOUND THAT NOTWITHSTANDING THAT THE EMPLOYEE DID NOT HAVE ALL OF THE NORMAL DUTIES THAT WERE CARRIED ON BY A SECURITY GUARD, THAT HE DID HAVE A SEARCH AND MONITORIAL AUTHORITY OVER EMPLOYEES IN THE BARGAINING UNIT WHICH WAS SIGNIFICANT CONSIDERING THE NATURE OF THE BUSINESS, AND THE BOARD THEN DETERMINED THAT THIS FACTOR CONSTITUTED SUFFICIENT EVIDENCE OF A CONFLICT OF INTEREST BETWEEN THAT PERSON AND THE EMPLOYEES IN THE BARGAINING UNIT TO CONSTITUTE THAT PERSON A SECURITY GUARD UNDER SECTION 11 OF THE ACT.

7. IN OUR VIEW THE SECURITY GUARDS IN THIS CASE, DESIGNATED AS "SECURITY" BY THEIR UNIFORMS MOST LIKELY FOR THE PURPOSE OF BEING IDENTIFIED IN THE EVENT THAT THERE ARE PROBLEMS OF A SECURITY NATURE ON THE CAMPUS PERFORM THEIR DUTIES AND RESPONSIBILITIES NOT MERELY AS WATCHMEN, BUT TO GUARD THE UNIVERSITY AND TO ENSURE ITS SECURITY. THEY ARE REQUIRED TO EXERCISE THEIR DUTIES AND RESPONSIBILITIES AS GUARDS TO ENSURE THE SECURITY OF THE CAMPUS, AND IN OUR VIEW THESE

DUTIES AND RESPONSIBILITIES ARE SUCH THAT THERE IS A CONFLICT OF INTEREST BETWEEN THEM AND OTHER EMPLOYEES OF THE UNIVERSITY. WHEN THAT FACTOR IS CONSIDERED WITH THEIR REMAINING DUTIES AND RESPONSIBILITIES, THEN IT IS, IN OUR OPINION THAT THE PERSONS AT ISSUE ARE SECURITY GUARDS WITHIN THE MEANING OF SECTION 11 OF THE LABOUR RELATIONS ACT.

8. THERE WAS A FURTHER DISPUTE AS TO WHETHER OTHER PERSONS DESIGNATED AS PARKING ATTENDANTS SHOULD BE INCLUDED IN THE BARGAINING UNIT WITH THE GUARDS. IN OUR VIEW, WHILE THERE MAY BE A SUFFICIENT COMMUNITY OF INTEREST BETWEEN THE PARKING ATTENDANTS AND THE SECURITY GUARDS WHICH IN THE ORDINARY CASE WOULD LEAD US TO CONCLUDE THAT THE TWO PARKING ATTENDANTS SHOULD BE PLACED IN THE SAME UNIT AS A SECURITY GUARD, WE ARE UNABLE TO GIVE EFFECT TO THAT CONTENTION BECAUSE OF THE PROHIBITION CONTAINED IN SECTION 11 OF THE ACT. THAT SECTION PROHIBITS THE BOARD FROM INCLUDING "IN A BARGAINING UNIT WITH OTHER EMPLOYEES" A PERSON EMPLOYED AS A GUARD TO PROTECT THE PROPERTY OF AN EMPLOYER AND IN OUR OPINION THE ACT ALSO PRECLUDES THE BOARD FROM INCLUDING PERSONS EMPLOYED AS SECURITY GUARDS IN BARGAINING UNITS WITH OTHER EMPLOYEES. THE REASON FOR OUR VIEW IS THAT GUARDS BECAUSE OF THE ACTUAL AND POTENTIAL CONFLICT OF INTEREST IN THEIR DUTIES AND RESPONSIBILITIES ARE TO BE PLACED IN A BARGAINING UNIT SEPARATE AND APART FROM OTHER EMPLOYEES; SEE GEO. A. CRAIN & SONS LTD. ET AL [1963] CLLC P. 1205; [1963] SEPT. OLRB REP. P. 316. ACCORDINGLY, WE DETERMINE THAT THE TWO PARKING LOT ATTENDANTS ARE NOT INCLUDED IN THE BARGAINING UNIT WITH THE SECURITY GUARDS.

9. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES, THE BOARD FINDS THAT ALL SECURITY GUARDS EMPLOYED BY THE RESPONDENT AT LONDON, ONTARIO, SAVE AND EXCEPT CORPORALS, PERSONS ABOVE THE RANK OF CORPORAL, PERSONS EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 11, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

12. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

13. THE MATTER IS REFERRED TO THE REGISTRAR.

1567-71-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. STERLING PACKERS LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: MARTIN LEVINSON FOR THE APPLICANT; JAMES T. HEATHER AND JACK FLANAGAN FOR THE RESPONDENT; F.R. VON VEH, D. BERG AND A. BRYANT FOR THE GROUP OF EMPLOYEES.

DECISION OF O.B. SHIME, VICE-CHAIRMAN: JUNE 13, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. IN THIS APPLICATION THERE WERE CERTAIN ALLEGATIONS MADE WITH RESPECT TO THE MEMBERSHIP EVIDENCE OF ROBERT ADDISON AND PARTICULARLY THAT MR. ADDISON DID NOT PAY \$1.00 WHEN HE SIGNED AN APPLICATION FOR MEMBERSHIP IN THE APPLICANT TRADE UNION. ACCORDINGLY, THE BOARD PROCEEDED IN ACCORDANCE WITH THE PROCEDURE SET OUT IN A.G. SIMPSON COMPANY LIMITED [1971] OLRB REP. 615 AT 617.

3. MR. ADDISON TESTIFIED THAT WHEN HE SIGNED THE APPLICATION FOR MEMBERSHIP THAT HE DID NOT HAVE \$1.00 AND THAT THE COLLECTOR TOLD HIM THAT HE WOULD COME BACK AND COLLECT THAT AMOUNT BUT NO ONE EVER CAME BACK.

4. THE EVIDENCE OF THE COLLECTOR, MR. DUPUIS, IS TO THE CONTRARY. HE CLAIMS THAT WHEN MR. ADDISON SIGNED THE MEMBERSHIP DOCUMENT HE GAVE HIM \$1.00.

5. BEYOND THE BASIC CONTRADICTION BETWEEN THE TWO WITNESSES THERE ARE OTHER BACKGROUND FACTS. MR. ADDISON CLAIMS THAT WHEN HE SIGNED THE CARD HE DID NOT HAVE ANY MONEY BECAUSE IT WAS JUST BEFORE PAY DAY. HE ADMITS THAT PAY DAY IS A FRIDAY AND IF HE HAD SIGNED THE CARD ON A FRIDAY HE WOULD HAVE HAD MONEY ON HAND TO PAY THE \$1.00 FOR MEMBERSHIP.

5. MR. DUPUIS ON THE OTHER HAND CLAIMS THAT HE APPROACHED MR. ADDISON ON A FRIDAY AT HIS HOME AND THAT MR. ADDISON SIGNED THE CARD ON THAT DAY.

6. IF WE WERE TO STOP AT THIS POINT AND EXAMINE THE OBJECTIVE

EVIDENCE OF THE SIGNED APPLICATION AND RECEIPT THAT IN ITSELF WOULD RESOLVE THE ISSUE. IF THAT EVIDENCE INDICATED A SIGNING ON THE FRIDAY IT WOULD NOT ONLY SUPPORT MR. DUPUIS' POSITION BUT IT WOULD ALSO REMOVE THE BASIS FOR MR. ADDISON'S POSITION, I.E., THAT HE SIGNED PRIOR TO FRIDAY AND DID NOT HAVE ANY MONEY. ON THE OTHER HAND IF THE CARD WAS SIGNED PRIOR TO A FRIDAY IT WOULD LEND SUPPORT TO MR. ADDISON'S POSITION AND WOULD DETRACT FROM MR. DUPUIS' POSITION THAT HE OBTAINED THE SIGNED MEMBERSHIP EVIDENCE ON A FRIDAY.

7. IN UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA AFL-CIO-CLC V. B.F. GOODRICH CANADA LIMITED [1969] DEC. OLRB REP. 1085, WHERE THE BOARD WAS FACED WITH A DIRECT CONFLICT IN ORAL TESTIMONY SUCH THAT THE BOARD WOULD NOT PREFER THE CREDIBILITY OF ONE WITNESS OVER ANOTHER IT LOOKED TO THE OBJECTIVE EVIDENCE OR THE MEMBERSHIP DOCUMENT SUBMITTED AND NOTED THAT ALTHOUGH THE WITNESS WHO IN TESTIMONY HAD DENIED PAYING \$1.00 HAD SIGNED A WRITTEN ACKNOWLEDGMENT WHICH INDICATED THAT HE HAD PAID THE \$1.00. THE BOARD THEN GAVE EFFECT TO THE SIGNED WRITTEN STATEMENT AS RELIABLE AND OBJECTIVE EVIDENCE.

8. IN THIS CASE THERE IS A SIMILAR SITUATION. MR. ADDISON HAS SIGNED A RECEIPT WHEREIN IT IS ACKNOWLEDGED THAT HE HAS PAID \$1.00; HOWEVER, THE PLACE FOR THE DATE TO BE FILLED IN HAS BEEN LEFT BLANK. FURTHER, THE APPLICATION FOR MEMBERSHIP AND THE ACKNOWLEDGMENT BY THE COLLECTOR THAT HE HAS RECEIVED THE \$1.00 AND THE CERTIFICATION BY MR. ADDISON THAT HE HAS PAID THAT AMOUNT HAVE THE APPEARANCE OF BEING WRITTEN AT DIFFERENT TIMES. MR. DUPUIS ADMITS THAT ALTHOUGH HE SIGNED THE CARD ON THE FRIDAY THAT HE FILLED IN THE DATE THE FOLLOWING DAY.

9. THE MEMBERSHIP DOCUMENTS ARE DATED DECEMBER 17TH, WHICH IS A FRIDAY. HOWEVER, THERE APPEARS TO BE CERTAIN MINOR DISCREPANCIES WHICH ARE APPARENT TO THE NAKED EYE, BUT NONETHELESS REQUIRE AN EXPERT OPINION BEFORE I WOULD BE PREPARED TO MAKE A CONCLUSIVE ASSESSMENT. FOR EXAMPLE, ALTHOUGH MR. DUPUIS SAYS HE SIGNED THE CARD ON ONE DAY AND FILLED IN THE DATE THE NEXT DAY, IT SEEMS THAT ON LOOKING AT THE CARD THAT HIS SIGNATURE AND THE DATE WERE PUT ON WITH THE SAME PEN AT THE SAME TIME. THIS IN ITSELF MAKES THE CARD SOMEWHAT DUBIOUS IN THE LIGHT OF THE EVIDENCE BECAUSE IT IS ALSO POSSIBLE FOR MR. DUPUIS TO HAVE COMPLETED FILLING IN THE CARD ON FRIDAY, DECEMBER 17TH, WHICH WOULD PLACE HIM AT MR. ADDISON'S HOME ON THE THURSDAY. IF THAT WERE THE CASE IT WOULD ADD FURTHER CREDENCE TO MR. ADDISON'S TESTIMONY. ON THE OTHER HAND IT IS POSSIBLE THAT THE CARD WAS IN FACT SIGNED ON THE FRIDAY AND THAT MR. ADDISON FILLED IN THE FRIDAY DATE ON THE SATURDAY.

10. FURTHER, MR. DUPUIS STATED THAT HE AND MR. ADDISON USED THE SAME PEN TO SIGN THE CARD. FROM APPEARANCES IT SEEMS THAT TWO DIFFERENT PENS WERE USED. THESE DISCREPANCIES MIGHT BE EXPLAINED ON THE BASIS THAT DIFFERENT WRITING PRESSURES WERE USED BY MR. ADDISON AND MR. DUPUIS SO THAT THE WRITING OF ONE APPEARS DARKER THAN THE WRITING OF THE OTHER.

11. IN THE RESULT I DO NOT FEEL THAT THE MEMBERSHIP DOCUMENTS OF MR. ADDISON ARE SUFFICIENTLY FREE OF AMBIGUITY TO ENABLE ME TO ACCEPT THE EVIDENCE IN RESOLVING THE ORAL TESTIMONY. IN THIS REGARD I ALSO NOTE THE DECISION OF THIS BOARD IN PARIS SPORTSWEAR LTD. [1967] APRIL OLRB REP. 29 THAT THERE IS SOME ONUS ON MR. ADDISON TO EXPLAIN HIS SIGNATURE ON THE RECEIPT.

12. I AM THEREFORE LEFT IN THE POSITION WHERE THE EVIDENCE ON BOTH SIDES IS PLACED IN A SUFFICIENTLY EQUAL BALANCE THAT THIS MATTER MUST BE RESOLVED ON THE BASIS OF ONUS. I FIND THAT ANY DISCREPANCIES OF EVIDENCE ARE WITHIN THE REALM OF REASONABLE HUMAN ERROR AND ARE NOT SUCH TO LEAD ME TO CONCLUDE FROM THE DEMEANOUR OF THE WITNESSES AND THE BACKGROUND FACTS THAT ONE OR OTHER OF THE WITNESSES WAS PERJURING HIMSELF. ACCORDINGLY, I FIND THAT THE UNION WHICH HAS SUBMITTED THE MEMBERSHIP EVIDENCE OF MR. ADDISON HAS NOT SATISFIED ME THAT THE EVIDENCE IS ACCEPTABLE AND ACCORDINGLY I DO NOT ACCEPT THE MEMBERSHIP DOCUMENTS OF MR. ADDISON FOR THE PURPOSES OF SECTION 7. IN SO DOING I AM NOT CREDITING OR DISCREDITING EITHER MR. ADDISON OR MR. DUPUIS, BUT I AM SIMPLY RESOLVING THE ISSUE ON THE TECHNICAL BASIS OF ONUS. I DO NOT MAKE ANY FINDING THAT MR. ADDISON DID OR DID NOT PAY \$1.00; I SIMPLY AM NOT SATISFIED PURSUANT TO MY STATUTORY OBLIGATION UNDER SECTION 7 OF THE ACT.

13. IN THE LIGHT OF MY FINDING THE QUESTION ARISES AS TO HOW I AM TO TREAT THE REMAINING EVIDENCE SUBMITTED BY MR. DUPUIS. HE IS A PAID UNION ORGANIZER AND THE BOARD HAS ON NUMEROUS OCCASIONS REJECTED EVIDENCE OF UNION MEMBERSHIP BY SUCH AN ORGANIZER IN THE FACT OF A FINDING THAT AN EMPLOYEE HAS NOT PAID \$1.00. THE REASON FOR THE BOARD'S POSITION IN THOSE CASES IS THAT THE BOARD MUST RELY ON THE EVIDENCE SUBMITTED BY THE UNION, AND SINCE SUCH EVIDENCE IS NOT SUBJECT TO EXAMINATION BY THE PARTIES, THE BOARD HAS BEEN VERY CIRCUMSPECT IN ACCEPTING SUCH EVIDENCE AND INSISTS ON THE HIGHEST STANDARDS OF INTEGRITY ON THE PART OF THOSE WHO SUBMIT SUCH EVIDENCE. THE BOARD HAS THEREFORE DISCOUNTED MEMBERSHIP EVIDENCE WHERE THERE IS "ANY ATTEMPT TO MISLEAD THE BOARD OR ANY FAILURE TO MAKE FULL DISCLOSURE OF ALL MATERIAL FACTS". WEBSTER AIR EQUIPMENT CO. LTD. 58 CLLC ¶18,110 (OLRB); AND SEE HOWARD SMITH PAPER MILLS LIMITED (CORNWALL DIVISION) 53 CLLC ¶17,068 (OLRB); R.C.A. VICTOR COMPANY LIMITED 53 CLLC ¶17,067 (OLRB). IN ASSESSING CONDUCT THE BOARD HAS DISTINGUISHED RESPONSIBLE OFFICERS OR OFFICIALS OF THE UNION FROM SUPPORTERS OR CANVASSERS WITH NO OFFICE IN THE UNION. WEBSTER AIR EQUIPMENT CO. LTD., SUPRA. IN THE FORMER CASE THE BOARD HAS DISCOUNTED ALL OF THE EVIDENCE WHILE IN THE LATTER CASE THE BOARD HAS DISCOUNTED ONLY THE EVIDENCE OF MEMBERSHIP OBTAINED BY THE SUPPORTER OR CANVASSER. SEE E.G., PARIS SPORTSWEAR LTD., SUPRA, (BUSINESS AGENT) AND ATOM-OTIVE PRODUCTS [1967] JAN. OLRB REP. 768 (EMPLOYEE COLLECTOR). LATTERLY, HOWEVER, EVEN WHERE THE ORGANIZER IS NOT AN OFFICIAL OR OFFICER OF THE TRADE UNION BUT A PERSON RESPONSIBLE FOR THE ENTIRE ORGANIZATIONAL CAMPAIGN THE BOARD HAS DEMANDED THE SAME STANDARDS FROM THAT TYPE OF PERSON AS IT HAS FROM A UNION OFFICER OR OFFICIAL; SEE BYERS OIL BURNER

SERVICE [1969] AUG. OLRB REP. 595; SLOUGH ESTATES LTD. [1965] JUNE OLRB REP. 173; WALTER E. SELCK OF CANADA LTD. [1964] JUNE OLRB REP. 138.

14. HOWEVER, A REVIEW OF THE CASES INDICATES THAT WHEN THE BOARD HAS MOVED ON TO DISCOUNT OTHER CARDS, WHETHER THOSE OF A UNION OFFICER OR OFFICIAL OR THOSE OF A VOLUNTARY COLLECTOR, IT HAS DONE SO ON THE BASIS OF A POSITIVE FINDING OF IMPROPRIETY WITH RESPECT TO THE SINGLE CARD. THE BOARD HAVING BEEN PLACED IN THE POSITION WHERE IT HAS BEEN FORCED TO RELY ON THE PARTY SUBMITTING EVIDENCE AND HAVING FOUND THAT PARTY UNRELIABLE EVEN IN ONE INSTANCE HAS CHOSEN NOT TO ACCEPT MEMBERSHIP EVIDENCE TENDERED BY SUCH A PARTY.

15. WHAT WE HAVE HERE, HOWEVER, IS A SITUATION WHERE THERE IS NO POSITIVE FINDING THAT THERE HAS BEEN AN "ATTEMPT TO MISLEAD" OR A "FAILURE TO MAKE FULL DISCLOSURE OF ALL MATERIAL FACTS" TO CAUSE ME TO CONSIDER MR. DUPUIS TO BE UNRELIABLE IN THE SENSE THAT I WOULD NOT BE PREPARED TO ACCEPT FURTHER EVIDENCE SUBMITTED BY HIM.

16. IN THE SALVATION ARMY GRACE HOSPITAL [1967] FEB. OLRB REP. 879 THE BOARD RULED THAT EVIDENCE OF NON-PAYMENT WAS NOT CONCLUSIVE OF THE ALLEGATION THAT NO MONEY HAD BEEN PAID AND THE BOARD FURTHER INDICATED THAT IT WAS NOT SATISFIED THAT ANY OF THE UNION OFFICIALS HAD ATTEMPTED TO ENGAGE IN A SCHEME TO DEFRAUD THE BOARD AND ORDERED A VOTE TO RESOLVE ANY DOUBT. IN MY VIEW THAT CASE SUGGESTS THAT BEFORE THE BOARD MOVES ON FROM ONE CARD TO DISCOUNT OTHER MEMBERSHIP EVIDENCE THERE MUST BE A CONCLUSIVE OR POSITIVE FINDING OF NON-PAYMENT SUCH THAT IT WOULD LEAD THE BOARD TO CONCLUDE THAT THERE WAS AN ATTEMPT TO DEFRAUD THE BOARD OR AT THE VERY LEAST THAT THERE WAS SUCH LAXNESS OF FAILURE TO DISCLOSE THAT THE BOARD SHOULD NOT RELY ON THE REMAINING EVIDENCE.

17. IN VIEW OF MY FINDING THERE IS NOTHING TO LEAD ME TO CONCLUDE THAT THERE WAS AN ATTEMPT TO DEFRAUD THE BOARD OR THAT THERE WAS SUCH LAXNESS OR FAILURE TO DISCLOSE THAT I SHOULD NOT RELY ON THE REMAINING EVIDENCE AND IN THESE CIRCUMSTANCES I AM NOT PREPARED TO DISCOUNT THE REMAINING MEMBERSHIP SUBMITTED BY MR. DUPUIS.

18. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

19. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 17, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE

THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

20. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

21. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

22. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER J.D. BELL: JULY 13, 1972.

1. THE CHAIRMAN HAS REVIEWED THE EVIDENCE PRESENTED IN THIS CASE. AFTER HEARING THE EVIDENCE OF BOTH MR. ADDISON AND MR. DUPUIS I HAVE NO PROBLEM IN MAKING A POSITIVE FINDING. I PREFER THE EVIDENCE OF MR. ADDISON AND FIND THAT HE DID NOT PAY \$1.00. THEREFORE, I WOULD NOT PLACE ANY RELIANCE ON THE MEMBERSHIP DOCUMENTS SUBMITTED BY THE APPLICANT AND ON WHICH MR. DUPUIS ACTED AS COLLECTOR. I WOULD DISMISS THIS APPLICATION.

DECISION OF BOARD MEMBER P.J. O'KEEFFE: JULY 13, 1972.

1. I HAVE NO HESITATION IN ACCEPTING THE TESTIMONY OF MR. DUPUIS OVER THAT OF MR. ADDISON AND WOULD THEREFORE DISMISS THE ALLEGATION OF NON-PAY WITH RESPECT TO THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT ON BEHALF OF MR. ADDISON.

2. IN THE RESULT I DO, HOWEVER, CONCUR WITH THE RESULT REACHED BY THE CHAIRMAN IN ORDERING A REPRESENTATION VOTE.

1499-71-U: JOHN BOURGEOIS (COMPLAINANT) v. LOCAL 721, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS (RESPONDENT).

RE: JAMES DAVID JOHNSTON

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: DAVID R. K. ROSE FOR THE COMPLAINANT; JAY B. WATERMAN FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER J. D. BELL:
JULY 14, 1972.

1. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES HEREIN AND TAKING INTO ACCOUNT THE PROVISIONS OF SECTION 93 OF THE LABOUR RELATIONS ACT, THE BOARD DIRECTS THAT THE STYLE OF CAUSE IN THIS APPLICATION BE AMENDED BY DELETING THE NAME "JAMES DAVID JOHNSTON PRESIDENT OF LOCAL 721, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS" APPEARING AS THE NAME OF THE RESPONDENT IN THIS APPLICATION AND SUBSTITUTING THEREFOR THE NAME "LOCAL 721, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS."

2. THIS IS A COMPLAINT FILED UNDER SECTION 79 OF THE LABOUR RELATIONS ACT WHEREIN THE COMPLAINANT, JOHN BOURGEOIS, ALLEGES THAT HE HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 60 OF THE SAID ACT.

3. THE INCIDENTS GIVING RISE TO THIS COMPLAINT APPEAR TO BE AS FOLLOWS: ON JULY 9, 1971, JOHN BOURGEOIS RECEIVED A REFERRAL SLIP AT THE LOCAL UNION HALL SIGNED BY THE DISPATCHER ROBERT ARMSTRONG WHICH INDICATED THAT HE WAS TO REPORT FOR WORK ON A PROJECT INVOLVING CHANGEOVER WORK AT THE FORD PLANT IN OAKVILLE. UPON ATTENDING THE WORK SITE THE NEXT MORNING, BOURGEOIS SIGNED A TD 1 SLIP WITH HIS PROSPECTIVE EMPLOYER, MUSTANG CONTRACTORS LIMITED, (HEREINAFTER REFERRED TO AS MUSTANG), IN THE COMPANY TRAILER. HOWEVER, PRIOR TO ACTUALLY COMMENCING WORK, HE WAS INFORMED BY JAMES DOWD, THE JOB STEWARD ON THE PROJECT, THAT HE COULD NOT GO TO WORK BECAUSE THE LATTER, UPON CHECKING WITH JAMES JOHNSON, THE LOCAL UNION PRESIDENT, DISCOVERED THAT THE COMPLAINANT'S NAME DID NOT APPEAR ON THE LIST WHICH HAD PREVIOUSLY BEEN PREPARED, SETTING OUT THE NAMES OF THE MEMBERS ASSIGNED FOR WORK ON THIS PROJECT. AS A RESULT BOURGEOIS LEFT THE WORK SITE AND HE NOW SEEKS COMPENSATION FOR THE RESULTANT LOSS OF INCOME.

4. THE EVIDENCE OF JOHN BOURGEOIS DISCLOSED THAT HE IS A JOURNEYMAN IRONWORKER AND A MEMBER IN GOOD STANDING IN THE APPLICANT FOR 15 YEARS. THE WITNESS FURTHER TESTIFIED THAT HE RECEIVED A PHONE CALL ON TUESDAY EVENING OF THE PREVIOUS WEEK FROM JOHN ARSENAULT, THE FOREMAN WITH MUSTANG AND WAS INFORMED BY HIM THAT HE (ARSENAULT) WOULD MAKE A SPECIFIC REQUEST TO THE LOCAL HALL FOR THE COMPLAINANT'S SERVICES AT THE FORD PROJECT SLATED TO COMMENCE FOR JULY 10, 1971. THE WITNESS FURTHER TESTIFIED THAT HE HAD PERSONALLY PHONED THE UNION HALL THURSDAY OR FRIDAY OF THAT PREVIOUS WEEK TO DETERMINE WHETHER ARSENAULT HAD REQUESTED HIM. IN THE WORDS OF THE WITNESS THE FOLLOWING TRANSPIRED: "I TALKED TO ARMSTRONG, THE DISPATCHER TO SEE IF I HAD BEEN REQUESTED WHO SAID THAT JOHNSON WANTED TO TALK WITH ME. HE (JOHNSON) FLATLY TOLD ME THERE WAS NO WAY I WAS GOING TO WORK AT THE FORD PLANT. I DON'T KNOW IF I INFORMED HIM THAT I WAS SPECIFICALLY REQUESTED. HIS REASON WAS I JUST QUIT A JOB."

5. THE EVIDENCE OF JOHN ARSENAULT IN THIS REGARD IS THAT HE DID IN FACT SUBSEQUENTLY SPEAK TO ARMSTRONG AT THE UNION HALL AND AT THAT TIME INDICATED THAT HE WANTED BOURGEOIS "AS A PUSHER". THE WITNESS COULD NOT REMEMBER WHEN THIS CONVERSATION OCCURRED NOR COULD HE RECALL IF THERE WERE ONE OR TWO OCCASIONS IN WHICH THIS REQUEST WAS MADE. THE REQUEST ITSELF WAS NEVER REDUCED TO WRITING AND THE WITNESS'S EVIDENCE WAS TO THE EFFECT THAT "MY PROCEDURE WAS ALWAYS TO DO IT OVER THE PHONE."

6. JAMES DOWD TESTIFIED THAT ON THE MORNING OF JULY 10, 1971, JOHN ARSENAULT INFORMED HIM THAT THREE EXTRA MEN HAD SHOWN UP FOR WORK AT THE FORD JOB SITE. AS A RESULT, THE WITNESS IMMEDIATELY PHONED THE UNION HALL AND INFORMED JAMES JOHNSON OF THE SITUATION. A CHECK OF THE NAMES ON THE SLIPS RECEIVED BY THE WITNESS WITH THE LIST OF NAMES ON THE LIST READ TO HIM BY JOHNSON, REVEALED THAT TWO NAMES DID NOT CORRESPOND. THESE NAMES WERE JOHN BOURGEOIS AND FRANK BERGERON. IN ADDITION, ANOTHER EMPLOYEE HAD ATTENDED THE WORK SITE WHOSE NAME DID NOT APPEAR ON THE LIST. HOWEVER, THE WITNESS DID NOT RECEIVE A SLIP FROM THIS EMPLOYEE. THE WITNESS WAS THEN TOLD BY JOHNSON THAT THESE THREE EMPLOYEES WERE TO BE INSTRUCTED NOT TO START WORK SINCE THEY WERE NOT ON THE LIST. UPON ADVISING THE THREE MEN OF THE SITUATION BOTH BOURGEOIS AND THE OTHER EMPLOYEE SUBSEQUENTLY LEFT THE SITE. BERGERON, HOWEVER, STRONGLY OBJECTED AND DESPITE INSTRUCTIONS TO THE CONTRARY FROM DOWD, HE DID IN FACT GO TO WORK FOR MUSTANG THAT MORNING.

7. THE EVIDENCE OF FRANK BERGERON IS TO THE EFFECT THAT HE RECEIVED A SLIP SIGNED BY ARMSTRONG AT THE UNION HALL ON JULY 9, 1971. UPON REPORTING FOR WORK AT THE FORD PLANT HE GAVE THE SLIP TO DOWD, AND UPON SIGNING UP WITH THE COMPANY WAS TOLD BY ARSENAULT TO GO TO WORK. UPON BEING TOLD OF THE SITUATION BY DOWD, THE WITNESS WAS ADAMANT IN HIS ENTITLEMENT TO WORK ON THE SITE AND MADE IT VERY CLEAR TO ALL CONCERNED THAT HE WOULD NOT COMPLY WITH THE INSTRUCTIONS EMANATING FROM JOHNSON.

8. THE EVIDENCE OF ROBERT ARMSTRONG INDICATES THAT MATTERS AT THE UNION HALL, WITH MANY MEMBERS MILLING ABOUT, ON JULY 9, 1971, WERE IN A STATE OF CONFUSION AS THE RESULT OF A STRIKE IN THE AREA. IN THE EXECUTION OF HIS DISPATCHING DUTIES, THE WITNESS TESTIFIED THAT IT WAS HIS NORMAL PRACTICE TO KEEP A RUNNING LIST OF THE NAMES OF THE MEMBERS AT THE SAME TIME THEY WERE ISSUED SLIPS. ALTHOUGH HE RECALLED ISSUING A SLIP TO BOURGEOIS AT THIS TIME, HE COULD NOT REMEMBER WHETHER HIS NAME WAS PUT ON THE LIST. MOREOVER, HE STATED THAT THE LIST IN QUESTION WAS SUBSEQUENTLY LOST. THE WITNESS ALSO TESTIFIED THAT HE HAD RECEIVED A PHONE CALL PRIOR TO JULY 9, 1971 FROM ARSENAULT WHO HAD SPECIFICALLY REQUESTED THE SERVICES OF BOURGEOIS. HOWEVER, HE COULD NOT RECALL WHETHER OR NOT ARSENAULT INDICATED THE PARTICULAR JOB FOR WHICH THE COMPLAINANT'S

SERVICES WERE SOUGHT. THE WITNESS FURTHER STATED THAT THE NORMAL PRACTICE WAS TO HONOUR THE EMPLOYER'S REQUEST FOR A PARTICULAR MAN, ALTHOUGH IN MANY CASES THIS PRACTICE WAS NOT LIVED UP TO. AS REGARDS THE LIST ITSELF, HE INDICATED THAT IN THE ABSENCE OF A SPECIFIC REQUEST AND PROVIDED THAT THE MAN QUALIFIED TO DO THE WORK, ASSIGNMENTS WOULD BE FILLED ON THE BASIS OF THE MEMBER WHO REGISTERED FIRST AND HENCE AT THE TOP OF THE LIST. AN EXCEPTION TO THIS PROCEDURE WOULD OCCUR IN RELATION TO SICK MEMBERS WHO COULD NOT BE AVAILABLE FOR THE PARTICULAR ASSIGNMENT AT THE TIME AND WHOSE NAME THEREFORE WOULD REMAIN ON THE TOP OF THE LIST. ONCE THE MEMBER'S NAME WAS REACHED, HE WOULD BE CALLED TO ATTEND AT THE HALL WHERE HE WOULD BE ISSUED WITH THE SLIP.

9. THE EVIDENCE OF JAMES MACDONALD, A MEMBER OF THE RESPONDENT FOR 16 YEARS, DISCLOSED THAT HE WAS EMPLOYED AT THE FORD PLANT BY MCGUINNESS CONVEYORS LTD. ON JULY 9, 1971 AFTER OBTAINING A SLIP AT THE HIRING HALL ON THE PREVIOUS THURSDAY. AFTER STARTING WORK ON SATURDAY, JULY 10, 1971, HE WAS TOLD BY BOURGEOIS THAT THE STEWARD DOWD HAD INFORMED HIM THAT AS A RESULT OF A TELEPHONE CONVERSATION THE LATTER HAD WITH JOHNSON, BOURGEOIS COULD NOT START WORK. THE WITNESS THEN APPROACHED DOWD IN THIS REGARD AND INFORMED HIM THAT BOURGEOIS HAD A BONA FIDE REQUEST FROM THE JOB SUPERINTENDENT FOR THE JOB ONE WEEK BEFORE AND HAS ALSO THE NECESSARY REFERRAL SLIP SANCTIONED BY MCISAAC, THE BUSINESS MANAGER AND HERBERT MACDONALD THE LOCAL BUSINESS AGENT FOR THAT PROJECT. THE WITNESS THEN INSTRUCTED DOWD TO SO INFORM JOHNSON BY TELEPHONE AND TO STRAIGHTEN THE MATTER OUT. ABOUT TEN MINUTES LATER, ACCORDING TO THE WITNESS, DOWD RETURNED SHAKING HIS HEAD AND STATED THAT BOURGEOIS COULD NOT START WORK. THE WITNESS THEN STATED THAT HE INFORMED DOWD THAT "THERE WILL BE TROUBLE OVER THIS AND THAT JOHNSON IS OVERSTEPPING HIS BOUNDS." THE WITNESS SUBSEQUENTLY ATTENDED AT THE UNION HALL ON MONDAY, JULY 12, 1971, AT 7:00 A.M. PRIOR TO STARTING WORK, WHERE HE OBSERVED JOHNSON HAND MUNDAN SMITH A REFERRAL SLIP FOR THE FORD PLANT. UPON STOPPING SMITH AS HE WAS LEAVING THE BUILDING HE WAS SHOWN THE SLIP AND NOTED THAT THE WORD "WELDER" APPEARED ON IT. THE WITNESS THEN APPROACHED JOHNSON IN THE HALL AND IN HIS WORDS, "I ASKED HIM HOW HE (JOHNSON) COULD JUSTIFY SENDING ANOTHER FRIEND - HE WAS PUTTING ALL HIS FRIENDS ON THIS GRAVY JOB - WHO WAS NOT A QUALIFIED WELDER AND WHO HAD JUST QUIT A JOB THAT PREVIOUS THURSDAY AT PILKINGTON GLASS."

10. HERBERT MACDONALD TESTIFIED THAT ON JULY 10, 1971 HE OCCUPIED THE DUAL POSITIONS OF RECORDING SECRETARY AND BUSINESS AGENT FOR THE WEST DISTRICT OF LOCAL 721. HE STATED THAT HE HAD RECEIVED A LIST OF EMPLOYEES FROM ARSENAULT ON THE PREVIOUS TUESDAY, VIZ. JULY 6, 1971, WHICH INCLUDED BOURGEOIS' NAME AND THAT HE HAD DISCUSSED THE LIST WITH JOHNSON AT THIS TIME. HE FURTHER STATED THAT HE HAD RECEIVED PHONE CALLS FROM BOTH BOURGEOIS AND ARSENAULT ON THE EVENING OF THURSDAY, JULY 8,

1971, WHEREIN HE AGREED THAT UPON ARSENAULT'S RECOMMENDATION FOR BOURGEOIS AS FORMAN, THE LATTER COULD GO TO WORK. HOWEVER THE WITNESS WAS DELAYED IN GETTING TO THE PROJECT UNTIL 10:15 A.M. ON SATURDAY JULY 10, 1971, WHERE HE DISCOVERED THAT BOURGEOIS HAD ALREADY LEFT THE PROJECT. A MEETING WITH THE MUSTANG OFFICIALS WAS SUBSEQUENTLY ARRANGED FOR 1:30 P.M. LATER THAT DAY WITH THE WITNESS AND HIS SUPERIOR, ALLAN McISAAC, THE BUSINESS MANAGER. THE WITNESS STATED THAT AT THIS TIME "WE CLARIFIED THAT BOURGEOIS WAS PROPERLY ENTITLED TO WORK." WHEN ASKED IF THE ISSUE WAS THEN SETTLED AT THIS POINT THE WITNESS REMARKED THAT IT WAS, AS FAR AS HE WAS CONCERNED, BUT HE STILL FELT THAT THE COMPANY WOULD NEVERTHELESS NOT CALL BOURGEOIS TO WORK BECAUSE IT DIDN'T WANT ANY FURTHER PROBLEMS. UPON FURTHER PROBING ON CROSS-EXAMINATION, THE WITNESS RELUCTANTLY CONCEDED THAT THE REAL PROBLEM CONFRONTING THE COMPANY WAS JOHNSON'S ALLEGED REFUSAL TO PERMIT BOURGEOIS TO WORK. IN THIS REGARD, THE WITNESS STATED THAT JOHNSON OCCUPIED TWO POSITIONS VIZ. PRESIDENT OF THE LOCAL WITH AUTHORITY OVER POLICY MATTERS, AFFECTING THE GENERAL MEMBERSHIP-AT-LARGE AND, ALSO BUSINESS AGENT FOR THE EAST DISTRICT OF THE UNION AND, AS SUCH, RESPONSIBLE FOR THE DAY TO DAY BUSINESS FOR THAT DISTRICT. IN THIS LATTER CLASSIFICATION, THE WITNESS WOULD INCLUDE THE TASK OF THE ASSIGNMENT OF MEMBERS TO PARTICULAR JOBS. McDONALD FELT THAT THE ASSIGNMENT OF MEMBERS TO THE FORD PROJECT AT OAKVILLE WOULD INITIALLY FALL WITHIN HIS OWN AREA OF RESPONSIBILITY IN HIS CAPACITY AS BUSINESS AGENT FOR THE WEST DISTRICT OF THE UNION. ULTIMATE AUTHORITY IN THIS REGARD, HE STATED, RESTED WITH McISAAC. IN SPITE OF THIS SITUATION, THE WITNESS NEVERTHELESS FELT THAT JOHNSON EXERTED THE REAL CONTROL IN THIS AREA. AS A RESULT, THE WITNESS CONCLUDED THAT THE COMPANY, ALTHOUGH VERY DESIROUS OF OBTAINING BOURGEOIS' SERVICES, NEVERTHELESS WOULD NOT RISK ANY DISRUPTION OF WORK ON THE PROJECT BY THE HIRING OF THE COMPLAINANT IN THE FACE OF JOHNSON'S OUTSTANDING INSTRUCTION TO DOWD THAT BOURGEOIS NOT BE PERMITTED TO WORK, NOTWITHSTANDING THE FACT THAT HE HAD BEEN PROPERLY CLEARED AND DISPATCHED BY THE UNION AND ASSURANCES TO THIS EFFECT WERE GIVEN BY BOTH THE WITNESS AND McISAAC.

11. THE EVIDENCE OF ALLAN McISAAC IS TO THE EFFECT THAT HE OCCUPIES THE POSITION OF BUSINESS MANAGER AND FINANCIAL SECRETARY IN THE RESPONDENT. THIS IS AN ELECTED OFFICE WHICH IS VOTED UPON BY THE MEMBERSHIP-AT-LARGE. THE HIGHEST GOVERNING BODY WITHIN THE UNION AND TO WHICH HE REPORTS BETWEEN GENERAL MEMBERSHIP MEETINGS, IS THE EXECUTIVE COMMITTEE. THE WITNESS STATED THAT ON FRIDAY, JULY 9, 1971, HE WAS ASSISTING ARMSTRONG IN THE DISPATCHING ACTIVITIES WHICH WERE BEING CARRIED ON AT THE UNION HALL. HE INDICATED THAT AT THIS TIME THERE WAS A HIGH UNEMPLOYMENT RATE IN THE UNION AND MATTERS WERE IN A STATE OF TURMOIL WHEN THE UNION RECEIVED AN ORDER FOR MEN AT THE FORD PLANT DURING ITS ANNUAL CHANGEOVER. HE SPECIFICALLY RECALLED PERSONALLY HANDING A REFERRAL SLIP TO

BOURGEOIS AT THIS TIME AND STATED THAT SHORTLY THEREAFTER HE RECEIVED A TELEPHONE CALL FROM ARSENAULT ENQUIRING ABOUT BOURGEOIS TO ENSURE THAT THE LATTER HAD BEEN DISPATCHED TO THE WORK SITE IN THE CAPACITY OF A FOREMAN. IN VIEW OF THE POLICY OF THE UNION NOT TO INTERFERE WITH THE SPECIFIC REQUEST OF AN EMPLOYER IN THESE CIRCUMSTANCES, THE WITNESS STATED THAT "I DIDN'T THINK THERE WOULD BE A PROBLEM."

12. THE WITNESS FURTHER TESTIFIED THAT ON SATURDAY AFTERNOON JULY 10, 1971, HE WAS CALLED TO THE FORD JOB SITE ON ANOTHER MATTER AND WHILE ENGAGED IN CONVERSATION WITH CERTAIN OF THE MUSTANG PERSONNEL, (INCLUDING ARSENAULT) AN INQUIRY WAS MADE IN REGARD TO BOURGEOIS NOT BEING ABLE TO START WORK. THE WITNESS INDICATED THAT HE KNEW OF THE SITUATION BEFOREHAND FROM DOWD, AND "I ASSUMED THAT A MISTAKE WAS MADE THAT MORNING AND THAT IT WOULD BE CORRECTED AS OF THEN." THE WITNESS THEN STATED "I ASSURED THEM (I.E. THE MUSTANG PERSONNEL) HE COULD START WORK AND TO ASSIGN HIM ON MONDAY. THE COMPANY WAS WORRIED ABOUT THE FEELINGS OF SOME OF THE MEN ON THE JOB AND WAS AFRAID IF THEY TOOK HIM BACK, THERE MAY BE A WORK STOPPAGE BUT I COULD GIVE NO GUARANTEE." THE WITNESS TESTIFIED THAT HE CONCLUDED THAT A SIMPLE MISTAKE HAD OCCURRED AT THE UNION HALL AND THAT THE MATTER WOULD BE RECTIFIED ON THE FOLLOWING MONDAY AS MUSTANG WOULD BE HIRING ADDITIONAL MEN AT THIS TIME.

13. THE WITNESS SUBSEQUENTLY ATTENDED THE UNION HALL AT 8:00 A.M. ON MONDAY, JULY 12, 1971, WHERE A STATE OF CONFUSION AGAIN EXISTED WITH MEMBERS MILLING ABOUT AND ARGUING WHILE AWAITING TO BE DISPATCHED. UPON APPROACHING JOHNSON, THE WITNESS TESTIFIED THAT "I SUGGESTED THAT HE SEND BOURGEOIS OUT TO THE FORD PLANT. DAVE (JOHNSON) INFORMED ME THAT THE MATTER WOULD BE HANDLED BY THE EXECUTIVE COMMITTEE. I ASSUMED THAT THE COMPANY PROBABLY WOULD CONTACT BOURGEOIS." IN THIS CONNECTION, THE WITNESS INDICATED THAT HE DID NOT PURSUE THE MATTER FURTHER AS JOHNSON WHO HAD INVESTIGATED THE CASE WAS OF THE OPINION THAT BOURGEOIS WAS "NOT IN ROTATING ORDER". THE WITNESS FURTHER STATED THAT HE IS NOT A MEMBER OF THE EXECUTIVE COMMITTEE. JOHNSON IS A MEMBER OF THIS COMMITTEE AND IN HIS CAPACITY AS PRESIDENT IS EMPOWERED TO CALL EXECUTIVE COMMITTEE MEETINGS. WHEN ASKED WHAT FURTHER ACTION IF ANY WAS TAKEN, THE WITNESS REPLIED THAT HE WAS NOT SURE IF A SPECIAL MEETING OF THE EXECUTIVE COMMITTEE WAS CALLED IN THIS REGARD AND EVEN IF SUCH A MEETING WAS HELD, HE WOULD NOT NECESSARILY BE INFORMED OF IT.

14. ALTHOUGH THE WITNESS TESTIFIED IN HIS EXAMINATION-IN-CHIEF, THAT BOURGEOIS, IN HIS OPINION, DID NOT GO BACK TO WORK BECAUSE THE COMPANY REFUSED TO CALL HIM BACK OR AS HE PUT IT IN HIS INITIAL CROSS-EXAMINATION, - "IT WAS UP TO THEM", THE WITNESS REPLIED IN THE AFFIRMATIVE WHEN SUBSEQUENTLY

QUESTIONED BY COUNSEL FOR THE RESPONDENT AS TO WHETHER OR NOT THERE WAS ANYTHING FURTHER TO BE DONE WITHIN THE UNION IN ORDER TO QUALIFY BOURGEOIS FOR THE JOB. McISAAC'S EXACT WORDS WERE: "YES, THE COMPANY WAS CONCERNED THAT JOHNSON SHOULD CLEAR UP THE PROBLEM - THAT'S WHY I SUGGESTED TO JOHNSON TO SEND BOURGEOIS OUT." WHEN QUESTIONED FURTHER AS TO WHETHER HE, IN HIS CAPACITY AS BUSINESS MANAGER WAS ENTITLED TO INSTRUCT JOHNSON TO SEND BOURGEOIS ON THE JOB, THE WITNESS REPLIED THAT "I HAD THE AUTHORITY BUT HOW EFFECTIVE THAT WAS, IS QUESTIONABLE SINCE HE (JOHNSON) COULD CALL AN EXECUTIVE COMMITTEE MEETING AT ANY TIME." IN THE CONCLUDING PORTION OF HIS CROSS-EXAMINATION, THE WITNESS FURTHER STATED THAT IT WAS NEVERTHELESS THE PAST PRACTICE OF THE UNION THAT THE INITIAL DECISION OF THE DISPATCHER REGARDING THE ASSIGNMENT OF A MEMBER AS EVIDENCED IN THE REFERRAL SLIP WOULD STAND PENDING AN INVESTIGATION INTO THE MATTER, WHICH IF WARRANTED, WOULD RESULT IN THE COUNTER-MANDING OF SUCH DECISION AT THE EXECUTIVE COMMITTEE MEETING.

15. THE ONLY EVIDENCE CALLED IN DEFENCE WAS ELICITED FROM THE PRESIDENT OF THE RESPONDENT, JAMES DAVID JOHNSON, WHO TESTIFIED THAT HE RECEIVED A PHONE CALL FROM DOWD ON THE MORNING OF JULY 10, 1971, ADVISING THAT TOO MANY MEN WERE ISSUED REFERRAL SLIPS FOR THE FORD PROJECT. AS DOWD READ OUT THE NAMES OF THE MEMBERS IN ATTENDANCE AT THE JOB SITE, THE WITNESS COMPARED EACH NAME WITH THE "OUT OF WORK" LIST OF NAMES HE HAD PREVIOUSLY PREPARED, WHEREIN HE ASCERTAINED THAT OF THE MEMBERS WHO HAD BEEN ISSUED REFERRAL SLIPS BOURGEOIS AND BERGERON WERE OUT OF WORK THE LEAST AMOUNT OF TIME. AS A RESULT, HE CONCLUDED THAT THESE MEN COULD NOT BE RETAINED ON THE PROJECT. IN THE WITNESSES' OWN WORDS, "I THEN TOLD DOWD THAT THESE TWO EMPLOYEES COULDN'T START. AT THAT TIME I KNEW NOTHING OF A SPECIFIC REQUEST FOR HIM (BOURGEOIS)." THE WITNESS FURTHER STATED THAT IN THE SITUATION WHERE TOO MANY MEN WERE ISSUED REFERRAL SLIPS, THE POLICY WAS TO CALL OFF THE PERSON OUT OF WORK THE SHORTEST AMOUNT OF TIME, PROVIDED THAT THERE WAS NO SPECIFIC REQUEST BY THE EMPLOYER FOR A NAMED INDIVIDUAL TO ACT IN A SUPERVISORY CAPACITY ON THE SITE. IN THIS REGARD, JOHNSON TESTIFIED THAT "IF I KNEW ABOUT THE SPECIFIC REQUEST FOR BOURGEOIS, I WOULD HAVE TOLD DOWD OKAY LET HIM GO AHEAD AND I WOULD HAVE THEN LOOKED FOR THE NEXT "LEAST TIME" MAN."

16. THE WITNESS FURTHER STATED THAT HE HAD ONLY ONE TELEPHONE DISCUSSION WITH DOWD ON THE MORNING OF JULY 10, 1971, AND NO MENTION OF THE SPECIFIC REQUEST WAS MADE TO HIM AT THIS TIME. IN CONTRAST TO THE EVIDENCE OF BOURGEOIS, HE DENIED HAVING ANY CONVERSATION WITH THE LATTER THE PREVIOUS WEEK AND MOREOVER STATED THAT HE HAD NOT SPOKEN TO HIM FOR APPROXIMATELY ONE YEAR. HE COULD NOT RECALL DISCUSSING ARSENAULT'S LIST WHICH INCLUDED THE NAME OF THE COMPLAINANT WITH HERBERT MACDONALD ON JULY 6, 1971. THE ONLY RECOLLECTION HE HAD OF A LIST WAS THAT ONE HAD BEEN WAIVED AT HIM DURING

THE CHAOS THAT REIGNED IN THE UNION HALL ON FRIDAY AFTERNOON, JULY 9, 1971. HE STATED, HOWEVER, THAT ONLY THE ENTITLEMENT OF LARRY CASSIDY, A PERSONAL FRIEND WAS QUESTIONED AT THIS TIME. UPON INVESTIGATING THE MATTER, HE DISCOVERED THAT CASSIDY WAS STILL EMPLOYED ON ANOTHER PROJECT, AND CONSEQUENTLY RULED THAT CASSIDY SHOULD NOT BE ASSIGNED TO THE FORD PROJECT.

17. THE WITNESS ADMITTED TO ISSUING MUNDAN SMITH A REFERRAL SLIP FOR THE FORD PROJECT PRIOR TO HIS CONFRONTATION WITH JAMES MACDONALD, AT THE UNION HALL, ON THE MORNING OF JULY 12, 1971. MATTERS, IN HIS OPINION, WERE STILL IN A HECTIC STAGE AND THE WITNESS COULD NOT RECALL IF MACDONALD, WHO WAS DOING VIRTUALLY ALL OF THE TALKING, HAD SPECIFICALLY RAISED THE PROBLEM IN RELATION TO BOURGEOIS. AS REGARDS THE PROPRIETY OF ISSUING THE SLIP TO SMITH, THE WITNESS STATED THAT THERE WERE NO CERTIFIED WELDERS WITHIN THE UNION WHO WERE UNEMPLOYED AT THE TIME. HE PERSONALLY KNEW THAT SMITH HAD PERFORMED WELDING FUNCTIONS ON PREVIOUS PTOJECTS BUT THERE WERE NO RECORDS AT THE UNION HALL DISCLOSING THAT HE WAS UNCERTIFIED. IN ANY EVENT, THE WITNESS STATED THAT THE UNION HAS UTILIZED IN THE PAST UNCERTIFIED BUT EXPERIENCED WELDERS DURING THE CHANGEOVER PERIODS AT THE AUTO PLANTS, IN SPITE OF THE APPARENT VIOLATION OF THE CANADIAN WELDING BUREAU REGULATIONS IN THIS REGARD.

18. THE WITNESS HAD NO RECOLLECTION OF THE CONVERSATION REGARDING BOURGEOIS BETWEEN HIMSELF AND McISAAC, ON THE MORNING OF JULY 12, 1971, AS ATTESTED TO BY THE LATTER. IN THE WORDS OF THE WITNESS, "NOBODY SPOKE TO ME ABOUT BRINGING HIM BACK AFTER JULY 10. I DIDN'T RECALL McISAAC'S CONVERSATION WITH ME THAT MORNING. THE ONLY PERSON I TALKED TO THAT FOLLOWING WEEK WAS BOURGEOIS HIMSELF AND HE INDICATED THAT HE MIGHT FILE CHARGES AGAINST ME."

19. THE WITNESS CONCEDED THAT THERE WERE TENSIONS BETWEEN HIMSELF AND THE MACDONALDS. HE ALSO ADMITTED TO EXPERIENCING TENSIONS WITH McISAAC, "BUT NOT IN THE SAME MANNER." HE BORE NO ILL-WILL TOWARDS BOURGEOIS, NOR HAD HE EVER INTENDED TO DISCRIMINATE AGAINST HIM IN ANY WAY. HE NEVER IDENTIFIED THE COMPLAINANT WITH ANY OF THE FACTIONS APPARENT IN THE MEMBERSHIP AT THIS TIME. FURTHER, THE WITNESS INDICATED THAT AS OPPOSED TO DISCRIMINATING AGAINST THE COMPLAINANT, HE WAS INSTRUMENTAL IN THE SUBSEQUENT APPOINTMENT OF BOURGEOIS TO A STRIKE COMMITTEE, A FUNCTION EXCLUSIVELY RESERVED TO THE PERSONAL DECISION OF THE PRESIDENT PURSUANT TO THE BY-LAWS OF THE RESPONDENT.

20. HAVING REGARD TO ALL OF THE EVIDENCE, WE ARE SATISFIED THAT THE RESPONDENT HAS AN ESTABLISHED PRACTICE AT ITS HIRING HALL OF HONOURING SPECIFIC REQUESTS BY THE EMPLOYER FOR NAMED MEMBERS TO ACT IN A SUPERVISORY CAPACITY WITHOUT REGARD TO

THE GENERAL CRITERIA THAT JOBS WOULD BE ASSIGNED TO QUALIFIED MEMBERS WHO WERE OUT OF WORK FOR THE LONGEST PERIOD OF TIME.

21. THE FIRST ISSUE TO BE RESOLVED BY THIS BOARD THEREFORE IS TO DETERMINE WHETHER OR NOT JOHNSON WHILE ACTING ON BEHALF OF THE RESPONDENT, KNEW AT THE TIME OF HIS TELEPHONE INSTRUCTIONS TO DOWD ON THE MORNING OF JULY 10, 1971, THAT ARSENAULT ON BEHALF OF MUSTANG HAD MADE A SPECIFIC REQUEST TO THE RESPONDENT FOR THE SUPERVISORY SERVICES OF BOURGEOIS. THE BOARD HAS CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE IN THIS REGARD, AND WE ARE NOT SATISFIED ON THE BALANCE OF PROBABILITIES THAT JOHNSON, AND HENCE THE RESPONDENT, KNEW OF THE SPECIFIC REQUEST AT THE TIME OF ISSUING HIS INSTRUCTIONS. OUR FINDING IN THIS REGARD IS FURTHER SUBSTANTIATED UPON EXAMINING THE REFERRAL SLIP ISSUED TO BOURGEOIS ON JULY 9, 1971. (EXHIBIT #1 IN THESE PROCEEDINGS). OPPOSITE THE WORD "CLASSIFICATION" APPEARING ON THE LEFT HAND SIDE OF THIS SLIP, APPEAR THE "INKED-IN" LETTERS "IW". THE ONLY DIRECT EVIDENCE ON THIS POINT IS THAT OF JOHNSON WHO STATED THAT THE LETTERS STAND FOR "IRONWORKER". HE FURTHER INDICATED THAT IT WAS THE COMMON PRACTICE THAT WHERE THE UNION WAS MADE AWARE OF A SPECIFIC REQUEST BY AN EMPLOYER FOR A NAMED MEMBER TO WORK AS A FOREMAN OR PUSHER THEN SUCH SUPERVISORY DESIGNATION WOULD HAVE BEEN SPECIFICALLY INDICATED ON THE SLIP.

22. THE NEXT ISSUE TO BE RESOLVED THEREFORE IS WHETHER THE RESPONDENT IN FAILING TO RECTIFY THE SITUATION, ONCE THE PROBLEM CONCERNING BOURGEOIS' ASSIGNMENT CAME TO LIGHT, ACTED IN A MANNER THAT WAS "ARBITRARY", DISCRIMINATORY OR IN BAD FAITH" IN THE REPRESENTATION OF THE COMPLAINANT CONTRARY TO THE PROVISIONS OF SECTION 60 OF THE ACT. THE EVIDENCE ON THIS POINT IS CONFUSING, AND AS IS APPARENT FROM THE FACTS AS SET OUT IN THIS DECISION, CONFLICTS SUBSTANTIALLY IN MANY PARTICULARS. HOWEVER, REGARDLESS OF WHETHER OR NOT WE PREFER THE EVIDENCE ADDUCED FROM THE WITNESS CALLED BY THE APPLICANT TO THAT ADDUCED BY JOHNSON ON BEHALF OF THE RESPONDENT, IT IS CLEAR THAT THE COMPLAINANT WILLINGLY OR UNWILLINGLY WAS CAUGHT IN A POWER STRUGGLE WITHIN THE UNION.

23. ON THE ONE HAND, IF WE ARE TO ACCEPT THE EVIDENCE OF McISAAC TO THE EFFECT THAT HE INFORMED JOHNSON ON MONDAY, JULY 12, 1971, WHY DID McISAAC NOT PURSUE THE MATTER FURTHER? WE FIND THAT McISAAC WAS WELL AWARE OF THE SERIOUSNESS OF THE SITUATION AT THIS TIME AND HE CANNOT AVOID RESPONSIBILITY IN THIS REGARD, SIMPLY BY SAYING THAT IT WAS UP TO MUSTANG TO CALL BOURGEOIS ON THE JOB. UNDERSTANDABLY, HE COULD NOT HAVE GIVEN THE COMPANY A COMPLETE GUARANTEE THAT THERE WOULD BE NO DISRUPTION OF WORK. HOWEVER, HE DID NOT KNOW THAT PARAMOUNT IN THE MINDS OF THESE MUSTANG OFFICIALS WAS THE FACT THAT JOHNSON'S INITIAL INSTRUCTIONS TAKING BOURGEOIS OFF THE JOB WERE NOT COUNTERMANDED.

EVEN IF WE WERE TO ACCEPT THE FACT THAT HE WAS NOT ENTITLED TO GIVE SUCH AN ASSURANCE IN THESE CIRCUMSTANCES, SURELY THEN HE HAD NO REASON TO WASH HIS HANDS ENTIRELY OF THE WHOLE AFFAIR AND TO ASSUME THAT THE COMPANY, IN THE PROTRACTED PERIOD OF A CHANGE-OVER SITUATION, WOULD RISK A DISRUPTION IN WORK BY ITSELF CONTACTING THE COMPLAINANT AND PUTTING HIM TO WORK IN THESE CIRCUMSTANCES. IN THIS REGARD, THE PROVISIONS OF SECTION 88(2) OF THE ACT ARE RELEVANT AND PROVIDE AS FOLLOWS:

"ANY ACT OR THING DONE OR OMITTED BY AN OFFICER, OFFICIAL OR AGENT OF A TRADE UNION OR COUNCIL OF TRADE UNIONS OR EMPLOYERS' ORGANIZATION WITHIN THE SCOPE OF HIS AUTHORITY TO ACT ON BEHALF OF THE UNION, COUNCIL OR ORGANIZATION SHALL BE DEEMED TO BE AN ACT OR THING DONE OR OMITTED BY THE UNION, COUNCIL OR ORGANIZATION."

24. IF ON THE OTHER HAND, WE WERE TO ACCEPT THE EVIDENCE OF JOHNSON TO THE EFFECT THAT HE ONLY BECAME AWARE OF THE SITUATION FROM DISCUSSIONS WITH THE COMPLAINANT HIMSELF THE FOLLOWING WEEK, THEN WHY WAS THERE NOT SOMETHING DONE AT THIS TIME IN LIGHT OF THE CLEAR AND WELL-ESTABLISHED PRACTICE OF THE UNION IN THIS REGARD AS INDICATED IN PARAGRAPH #20 HEREIN? THE EVIDENCE OF JAMES MACDONALD, DISCLOSES A VAGUE REFERENCE TO THE FACT THAT A UNION "TRIAL" CONCERNING BOURGEOIS' ACCUSATIONS WAS CONDUCTED BUT HE NEVERTHELESS STATED THAT HE WAS NEVER CALLED TO TESTIFY ALTHOUGH HE WAS AVAILABLE. MOREOVER, THERE IS NO EVIDENCE BEFORE US THAT ANY EXECUTIVE MEETING IN THIS REGARD WAS IN FACT CALLED IN THIS REGARD.

25. EITHER WAY ONE VIEWS THE EVIDENCE, IT BECOMES ABUNDANTLY CLEAR THAT THE RESPONDENT THROUGH THE UNRESPONSIVENESS OF EITHER JOHNSON OR McISAAC OR A COMBINATION THEREOF, ACTED IN THESE CIRCUMSTANCES IN AN "ARBITRARY" MANNER, TO SAY THE LEAST, IN THE REPRESENTATION OF JOHN BOURGEOIS AS REGARDS HIS ENTITLEMENT TO BE ASSIGNED WORK WITH MUSTANG AT THE FORD JOB SITE DURING THE WEEK COMMENCING JULY 12, 1971. EVEN ASSUMING THAT A BONA FIDE MISTAKE WAS MADE IN THE REFERRAL SLIP ISSUED TO BOURGEOIS WHICH IDENTIFIED HIM AS AN IRONWORKER AND NOT AS A FOREMAN OR PUSHER, SURELY THE COMPLAINANT'S REMOVAL FROM THE JOB AT A TIME WHEN MUSTANG REQUIRED ADDITIONAL EMPLOYEES, FLIES IN THE FACE OF THE PRACTICE OF THE RESPONDENT TO HONOUR REFERRAL SLIPS ONCE ISSUED. (ON THIS LATTER POINT, SEE THE UNCONTRADICTED EVIDENCE OF McISAAC IN PARAGRAPH #14 HEREIN).

26. HAVING REGARD THEREFORE TO ALL OF THESE CIRCUMSTANCES, AND FOR THE REASONS ABOVE STATED, WE FIND THAT THE COMPLAINANT JOHN BOURGEOIS WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 60 OF THE ACT.

27. THE REGISTRAR IS ACCORDINGLY DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING TO ENABLE THE PARTIES TO ADDUCE EVIDENCE AND SUBMIT REPRESENTATIONS CONCERNING THE DETERMINATION OF THE REMEDY, IF ANY, TO BE EFFECTED BY THIS BOARD PURSUANT TO SECTION 79(4)(c) OF THE ACT.

DECISION OF BOARD MEMBER O. HODGES: JULY 14, 1972.

1. I DISSENT.

2. THE COMPLAINANT IN MY VIEW HAD AN OBLIGATION TO VERIFY THE WORK HE HAD BEEN ASSIGNED WHEN THE REFERRAL SLIP WAS ISSUED TO HIM. THE LEAST ONE MAY BE EXPECTED TO DO IS SHOW INTEREST IN THE JOB ASSIGNED. ON THE EVIDENCE, HAD THE REFERRAL SLIP INDICATED "PUSHER" OR "FOREMAN", BOURGEOIS WOULD HAVE STARTED WORK.

3. IT APPEARS STRANGE THAT THE STEWARD DOWD WAS NOT MADE AWARE BY THE FOREMAN ARSENAULT THAT BOURGEOIS WAS TO START AS A "PUSHER" OR "FOREMAN".

4. THAT BOURGEOIS WAS A PAWN OR DUPE IN SOME POWER PLAY IS SHEER SPECULATION. THERE IS A POWER STRUGGLE IN EVERY DEMOCRATIC ORGANIZATION, IF THE ORGANIZATION IS ALIVE. AFTER CAREFULLY CONSIDERING ALL OF THE EVIDENCE AND IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, I AM UNABLE TO JOIN WITH THE MAJORITY IN FINDING THE RESPONDENT OR ITS OFFICERS RESPONSIBLE FOR THE DIFFICULTY IN WHICH MR. BOURGEOIS FOUND HIMSELF AT THE MATERIAL TIMES. HE IS THE MASTER OF HIS OWN MISFORTUNE, AND ENTITLED TO NO RELIEF FOR THE PROBLEM HIS OWN CARELESSNESS CREATED.

5. I FIND NO VIOLATION OF S60 OF THE ACT AND THEREFORE DISMISS THE COMPLAINT.

2110-72-U: SAL MESSINA (COMPLAINANT) V. LOCAL 30 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND H.J.F. ADE.

DECISION OF THE BOARD: JULY 17, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT HE HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 60 OF THE ACT, WHICH PROVIDES AS FOLLOWS:

60. A TRADE UNION OR COUNCIL OF TRADE UNIONS, SO LONG AS IT CONTINUES TO BE ENTITLED TO REPRESENT

EMPLOYEES IN A BARGAINING UNIT, SHALL NOT ACT IN A MANNER THAT IS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH IN THE REPRESENTATION OF ANY OF THE EMPLOYEES IN THE UNIT, WHETHER OR NOT MEMBERS OF THE TRADE UNION OR OF ANY CONSTITUENT UNION OF THE COUNCIL OF TRADE UNIONS, AS THE CASE MAY BE.

A FIELD OFFICER WAS APPOINTED AND HE HAS NOW SUBMITTED HIS REPORT TO THE BOARD.

2. WE HAVE CAREFULLY CONSIDERED THE STATEMENT OF THE COMPLAINANT AS GIVEN TO THE FIELD OFFICER. EVEN IF ALL THE MATTERS SET OUT THEREIN WERE ESTABLISHED IN EVIDENCE, WE ARE OF THE OPINION THAT THERE IS NOTHING IN THE SAID STATEMENT FROM WHICH IT COULD BE INFERRED THAT THE RESPONDENT UNION ACTED IN A MANNER THAT WAS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH. ON THE COMPLAINANT'S OWN STATEMENT THE OFFICERS OF THE RESPONDENT UNION INVESTIGATED HIS COMPLAINT AND ARRIVED AT A DECISION AGAINST PROCESSING A GRIEVANCE. AS WAS POINTED OUT IN BRIAN F. O'DONNELL AND AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AND STEINBERG'S LIMITED OTHERWISE KNOWN AS MIRACLE FOOD MART, [1972] OLRB REP., (MAY) P. 423 AT P. 428, A TRADE UNION IS NOT REQUIRED TO PROCESS EVERY GRIEVANCE WHICH A BARGAINING UNIT EMPLOYEE WISHES TO HAVE PROCESSED. A UNION FULFILLS ITS DUTY OF FAIR REPRESENTATION UNDER SECTION 60 SO LONG AS, IN REACHING ITS DECISION NOT TO PROCESS A GRIEVANCE, IT DOES NOT ACT IN A MANNER THAT IS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH.

3. IN THE RESULT, WE ARE OF THE OPINION THAT THE COMPLAINT DOES NOT MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO SUBSECTION (1) OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT IS HEREBY DISMISSED.

2081-72-U: CANADIAN ELEVATOR MANUFACTURERS, A DIVISION OF CANADIAN ELECTRICAL MANUFACTURERS ASSOCIATION (APPLICANT) V. INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 96 - OTTAWA (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: M. G. MITCHNICK, R. SUDDARD AND L. A. BERTUZZI FOR THE APPLICANT; DENIS J. POWER AND JOE KENNEDY FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 17, 1972.

1. THE NAME "INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL UNION No. 96" APPEARING IN THE STYLE OF CAUSE OF THIS

APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ:
 "INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 96 -
 OTTAWA".

2. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT FOR AN ALLEGED VIOLATION OF SECTION 65 OF THE LABOUR RELATIONS ACT. AT THE HEARING, THE RESPONDENT SUBMITTED THAT THIS APPLICATION OUGHT TO BE DISMISSED ON TWO GROUNDS. FIRSTLY, THAT THE APPLICATION DOES NOT DISCLOSE AN ALLEGATION THAT SECTION 65 OF THE ACT HAS BEEN CONTRAVENED AND SECONDLY, THAT SINCE IT IS NECESSARY TO INTERPRET THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT IN ORDER TO DETERMINE WHETHER A STRIKE HAS TAKEN PLACE, THE BOARD OUGHT TO HOLD THIS APPLICATION IN ABEYANCE PENDING A RULING BY AN ARBITRATION BOARD.

3. THE BOARD DOES NOT AGREE WITH THE FIRST CONTENTION OF THE RESPONDENT. WITH REGARD TO THE SECOND CONTENTION OF THE RESPONDENT THE BOARD DETERMINED AT THE HEARING IN THIS MATTER THAT IT WOULD CONTINUE AND HEAR THIS APPLICATION FOR CONSENT TO INSTITUTE PROSECUTION AGAINST THE RESPONDENT. THE LABOUR RELATIONS ACT CREATES CERTAIN STATUTORY OFFENCES WHICH ARE OFFENCES AGAINST THE PUBLIC AND WHICH RENDER A PERSON GUILTY OF SUCH OFFENCES LIABLE TO PUNISHMENT IN THE FORM OF A FINE. WHILE THESE OFFENCES MAY INJURE PRIVATE PERSONS WHO HAVE OTHER REMEDIES, SUCH AS BY WAY OF ARBITRATION, SUCH OFFENCES ARE ACTS PUNISHABLE BY THE STATE. ARBITRATION PROCEEDINGS HAVE, FOR THEIR OBJECT, THE RECOVERY OF MONEY OR THE ENFORCEMENT OF A RIGHT FOR A PERSON WHICH IS A PARTY TO THE ARBITRATION PROCEEDING. HOWEVER, OFFENCES UNDER THE LABOUR RELATIONS ACT ARE PENAL OR QUASI CRIMINAL IN NATURE AND HAVE FOR THEIR OBJECT THE PUNISHMENT OF PUBLIC OFFENCE. REFERENCE IS MADE TO THE FRANKLIN MANUFACTURING COMPANY (CANADA) LIMITED CASE, M.R. JUNE 1970, P. 341.

4. HAVING REGARD TO THE EVIDENCE BEFORE IT AND TO THE SUBMISSIONS OF THE PARTIES, THE BOARD FINDS THAT THERE ARE ISSUES OF LAW AND FACT WHICH HAVE BEEN RAISED AND WHICH MIGHT PROPERLY BE DETERMINED BY A PROVINCIAL JUDGE. THE BOARD THEREFORE CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT COMMENCING ON OR ABOUT MAY 9, 1972
 UP TO AND INCLUDING JUNE 6, 1972, THE
 RESPONDENT DID VIOLATE SECTION 65 OF
 THE LABOUR RELATIONS ACT IN THAT IT DID
 CALL OR AUTHORIZE AN UNLAWFUL STRIKE.

5. THE APPROPRIATE DOCUMENTS WILL ISSUE.

1838-72-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES (TRADE UNION)
V. THE CORPORATION OF THE TOWN OF MARKHAM (EMPLOYER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

APPEARANCES AT THE HEARING: J. A. RYDER AND T. EDWARDS FOR THE TRADE UNION; JOHN P. SANDERSON FOR THE EMPLOYER.

DECISION OF THE BOARD: JULY 18, 1972.

1. THE MINISTER HAS REFERRED TO THE BOARD, PURSUANT TO SECTION 96 OF THE ACT, THE QUESTION AS TO WHETHER THE MINISTER HAS THE AUTHORITY UNDER THE LABOUR RELATIONS ACT TO APPOINT A CHAIRMAN TO CONDUCT AN ARBITRATION HEARING BETWEEN THE PARTIES.

2. FOR THE REASONS REFERRED TO ORALLY AT THE HEARING, WE FIND THAT WE ARE BOUND BY THE DECISIONS OF THIS BOARD DATED JANUARY 10, 1972, MARCH 1, 1972 AND JUNE 16, 1972 IN AN APPLICATION TO TERMINATE THE BARGAINING RIGHTS OF LOCAL 1219, CANADIAN UNION OF PUBLIC EMPLOYEES WITH RESPECT TO THE EMPLOYEES OF THE EMPLOYER WITH WHOM WE ARE HERE CONCERNED, BOARD FILE NO. 944-71-R. WE FURTHER FIND THAT SINCE THE TRADE UNION IN THESE PROCEEDINGS WAS A PARTY TO THE PROCEEDINGS IN THE CASE ABOVE REFERRED TO THAT THE TRADE UNION IS ALSO BOUND BY THE DECISION OF THE BOARD IN THAT MATTER. FOR THE REASONS ABOVE REFERRED TO, WE FURTHER FIND THAT THERE IS NO SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE PARTIES IN THIS MATTER AND ACCORDINGLY THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER IS NO, YOU HAVE NO AUTHORITY UNDER THE LABOUR RELATIONS ACT TO APPOINT A CHAIRMAN OF AN ARBITRATION BOARD TO CONDUCT A HEARING BETWEEN THE PARTIES IN THIS CASE.

728-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA
(APPLICANT) V. BIRMINGHAM CONSTRUCTION LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: W. HAGUE FOR THE APPLICANT AND ROBERT A. MACDONALD FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 18, 1972.

1. THE BOARD NOTES THE AGREEMENT OF THE PARTIES TO THE SUBSTITUTION OF A VICE-CHAIRMAN IN THE PLACE AND STEAD OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN.

2. THIS IS AN APPLICATION FOR CERTIFICATION WITH RESPECT

TO A UNIT OF EMPLOYEES IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND.

3. ON THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION THE RESPONDENT AND THE EMPLOYEES AFFECTED BY THIS APPLICATION WERE ENGAGED IN CONNECTION WITH THE CONSTRUCTION OF A RAILWAY BRIDGE ACROSS THE WELLAND RIVER AT THE TOWN OF PELHAM IN ONTARIO. THE EMPLOYEES AFFECTED BY THIS APPLICATION WERE THE ONLY EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND. THE RAILWAY BRIDGE WAS BEING CONSTRUCTED FOR THE TORONTO, HAMILTON AND BUFFALO RAILWAY CO. WHICH USES THE BRIDGE AS PART OF ITS RAILWAY SYSTEM. THE TORONTO, HAMILTON AND BUFFALO RAILWAY CO. COMMENCES WITHIN ONTARIO AND CONTINUES TO THE CITY OF BUFFALO IN THE STATE OF NEW YORK.

4. THE RESPONDENT SUBMITTED THAT THE BOARD DOES NOT HAVE JURISDICTION TO ENTERTAIN THIS APPLICATION BECAUSE THE WORK IN QUESTION CONSISTED OF DRIVING PILES FOR A RAILWAY BRIDGE WHICH WAS NECESSITATED BY ALTERATIONS TO THE WELLAND CANAL. IT WAS THE POSITION OF THE RESPONDENT THAT BOTH RAILWAYS AND THE ST. LAWRENCE SEAWAY AUTHORITY COME UNDER DOMINION JURISDICTION.

5. AFTER CONSIDERING THE LEGISLATION AND THE AUTHORITIES REFERRED TO IT, INCLUDING THE BRITISH NORTH AMERICA ACT, SECTIONS 91 AND 92(10)(A) AND SCHWENGER CONSTRUCTION LIMITED CASE, OLRB M.R. FEBRUARY 1965, P. 576, ROBERTSON-YATES CORPORATION LIMITED CASE, OLRB M.R. OCTOBER 1962, P. 215 AND CANADIAN PACIFIC RAILWAY COMPANY V. CORPORATION OF THE PARISH OF NOTRE DAME DE BONSECOURS [1899] A.C. 367; THE BOARD FINDS THAT IT IS WITHOUT JURISDICTION TO DEAL WITH THE PRESENT APPLICATION FOR CERTIFICATION.

6. ACCORDINGLY, THIS PROCEEDING IS TERMINATED.

1779-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. ATOMIK CONSTRUCTION COMPANY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

DECISION OF THE BOARD: JULY 18, 1972.

1. THE RESPONDENT BY LETTER DATED JULY 10, 1972 HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED JUNE 14, 1972 IN THIS MATTER. AMONG OTHER THINGS, THE RESPONDENT CHALLENGED THE BOARD'S RIGHT TO ACCEPT IN EVIDENCE A PHOTOCOPY OF A LETTER FROM THE PRESIDENT OF THE RESPONDENT. IT IS THE BOARD'S REGULAR PRACTICE TO ACCEPT IN EVIDENCE PHOTOCOPIES OF DOCUMENTS. WHILE SUCH PHOTOCOPIED DOCUMENTARY EVIDENCE IS OPEN TO CHALLENGE, IF NO EVIDENCE IS CALLED TO REFUTE THE CONTENTS OF THE PHOTOCOPIED

DOCUMENTARY EVIDENCE, SUCH EVIDENCE IS ACCEPTED BY THE BOARD AS PRIMA FACIE EVIDENCE THAT IT IS IN THE SAME FORM AS THE ORIGINAL DOCUMENT OF WHICH IT IS A PHOTOCOPY. HOWEVER, APART FROM ANY OTHER CONSIDERATION, THE VIVA VOCE EVIDENCE OF MR. C. LACOMBE (WHO WAS CALLED BY THE RESPONDENT) WHO TESTIFIED THAT THE PRESIDENT OF THE COMPANY ADDRESSED A MEETING OF EMPLOYEES ON SATURDAY, APRIL 29, 1972 AND READ THE CONTENTS OF THE SAID LETTER TO THE MEETING OF EMPLOYEES SERVED TO FURTHER IDENTIFY THE PHOTOCOPY OF THE LETTER.

2. THE EVIDENCE REFERRED TO ABOVE WAS INTRODUCED BY THE APPLICANT BY WAY OF DEFENCE TO THE CHARGES MADE BY THE RESPONDENT AND ACCORDINGLY THE APPLICANT WAS NOT REQUIRED UNDER THE BOARD'S RULES OF PROCEDURE TO GIVE NOTICE THAT IT INTENDED TO CALL SUCH EVIDENCE. IF THE RESPONDENT HAD NOT CALLED EVIDENCE IN SUPPORT OF ITS ALLEGATIONS OF UNFAIR CONDUCT WHICH WERE MADE AGAINST THE APPLICANT, THERE WOULD HAVE BEEN NO NEED, AND INDEED THE APPLICANT WOULD NOT HAVE BEEN PERMITTED, TO CALL EVIDENCE CONCERNING THE CONDUCT OF THE RESPONDENT'S OFFICERS.

3. SINCE ALL THE ISSUES RAISED IN THE LETTER WERE ARGUED AT THE HEARING IN THIS MATTER AND WERE DEALT WITH BY THE BOARD BEFORE IT ARRIVED AT ITS DECISION ABOVE REFERRED TO, WE ARE OF OPINION THAT NO FURTHER OPPORTUNITY OUGHT TO BE GIVEN TO THE RESPONDENT TO ADDRESS FURTHER ARGUMENT WITH RESPECT TO SUCH EVIDENCE IN THIS CASE.

4. SINCE IT HAS NOT BEEN ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE TO THE RESPONDENT WHICH WAS NOT AVAILABLE AT THE HEARING IN THIS MATTER, THE BOARD, IN ACCORDANCE WITH ITS USUAL PRACTICE, DOES NOT CONSIDER IT NECESSARY TO VARY OR REVOKE ITS DECISION OF JUNE 14, 1972 IN THIS MATTER.

5. THE RESPONDENT'S REQUEST AS CONTAINED IN ITS LETTER OF JULY 10, 1972 IS THEREFORE DENIED.

2262-72-U: THE TORONTO WESTERN HOSPITAL (APPLICANT) V. CANADIAN UNION OF GENERAL EMPLOYEES (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J. D. BELL.

APPEARANCES AT THE HEARING: R. B. POTTER AND D. S. AFFLECK FOR THE APPLICANT; AND G. MILLER AND H. MCLACHLAN FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 18, 1972.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT A STRIKE CALLED OR AUTHORIZED BY THE RESPONDENT IS UNLAWFUL. THE BOARD

DIRECTED THAT THE TIME FOR FILING OF THE REPLY BE ABRIDGED AND THAT IT BE FILED IN THE OFFICES OF THE BOARD BY 12:00 NOON ON MONDAY, JULY 17TH, 1972. THE APPLICATION WAS FILED WITH THE BOARD AFTER CLOSING HOURS ON JULY 12TH. THE HEARING IN THIS MATTER WAS SCHEDULED FOR TODAY, TUESDAY, JULY 18TH, 1972. THE REPLY WAS FILED IN ACCORDANCE WITH THE BOARD'S DIRECTION AND DECLARED THAT AN APPLICATION FOR A WRIT OF PROHIBITION WAS BEING BROUGHT BEFORE THE SUPREME COURT OF ONTARIO BY THE RESPONDENT ON THE GROUND THAT THE BOARD HAD NO JURISDICTION TO HEAR THE APPLICATION UNDER THE LABOUR RELATIONS ACT. A NOTICE OF MOTION SEEKING A PROHIBITION AGAINST THE BOARD WAS SERVED ON THE BOARD LATE IN THE AFTERNOON OF JULY 17TH.

2. AT THE COMMENCEMENT OF THE HEARING THIS MORNING, COUNSEL FOR THE APPLICANT ASKED LEAVE OF THE BOARD TO AMEND ITS APPLICATION AS FOLLOWS: BY ADDING AT THE TOP OF THE APPLICATION

FORM 1

THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT

AND

SO THAT THE SAID APPLICATION WOULD NOW READ AS FOLLOWS:

FORM 1

THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT

AND

FORM 22

THE LABOUR RELATIONS ACT

ON ITS FACE THE APPLICATION AS ORIGINALLY FILED IN THIS CASE WAS HEADED:

FORM 22

THE LABOUR RELATIONS ACT.

3. SECTION 2(1) OF O. REG. 441 MADE UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT PROVIDES THAT AN APPLICATION FOR A DECLARATION THAT A STRIKE IS UNLAWFUL SHALL BE MADE IN QUADRUPLICATE IN FORM 1 OR 2, AS THE CASE MAY BE. FORM 1 IS THE APPLICABLE FORM IN THE PRESENT CASE. APART FROM THE HEADING, I.E., "FORM 1 THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT", FORM 1 MADE PURSUANT TO SECTION 2(1) OF O. REG. 441 IS IN EXACTLY THE SAME FORM AS FORM 22 MADE UNDER THE AUTHORITY OF THE LABOUR RELATIONS ACT, R.S.O. 1970 c. 232.

BOTH FORMS DEAL WITH AN APPLICATION FOR A DECLARATION THAT A STRIKE, CALLED OR AUTHORIZED BY A TRADE UNION OR COUNCIL OF TRADE UNIONS IS UNLAWFUL. BOTH PROCEEDINGS RESULTING FROM THE FILING OF SUCH APPLICATIONS ARE HEARD BY THE LABOUR RELATIONS BOARD.

4. AS NOTED ABOVE, THE APPLICATION PURPORTS TO BE MADE UNDER THE LABOUR RELATIONS ACT. HOWEVER, IN THE BODY OF THE APPLICATION AND PARTICULARLY IN PARAGRAPHS 2(c) AND (g) REFERENCE IS MADE TO THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. THUS, IN PARAGRAPH 2(c) OF THE APPLICATION THE APPLICANT IS DESCRIBED AS A HOSPITAL WITHIN THE MEANING OF THAT ACT AND THE EMPLOYEES COVERED BY AN EARLIER REFERRED TO COLLECTIVE AGREEMENT ARE DESCRIBED AS HOSPITAL EMPLOYEES WITHIN THE MEANING OF THE SAID ACT. IN PARAGRAPH 2(g) IT IS ALLEGED THAT CERTAIN OF THE EMPLOYEES OF THE APPLICANT WITHIN THE RELEVANT BARGAINING UNIT "ENGAGED IN A STRIKE CONTRARY TO SECTION 8 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT AND/OR SECTION 63 OF THE LABOUR RELATIONS ACT." IT IS SUBMITTED BY COUNSEL FOR THE APPLICANT THAT IT IS CLEAR FROM THE BODY OF THE APPLICATION THAT IT WAS INTENDED TO BE AN APPLICATION UNDER BOTH ACTS AND THAT TO CLEAR UP ANY DOUBT THE APPLICANT SHOULD BE PERMITTED TO AMEND THE APPLICATION AS SET OUT ABOVE. IN SUPPORT THEREOF REFERRED NOT ONLY TO THE REFERENCE IN THE APPLICATION TO THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT BUT ALSO TO THE FACT THAT THE FORMS IN QUESTION, EXCEPT FOR THE HEADING, WERE IDENTICAL. HE ALSO STRESSED THE FACT THAT, REGARDLESS OF WHICH ACT HE WAS PROCEEDING UNDER, THE SUM AND SUBSTANCE OF THE APPLICATION AS IT RELATED TO THE RESPONDENT WAS THE SAME; THAT THE MATTER IN EITHER CASE WAS ONE TO BE DEALT WITH BY THE LABOUR RELATIONS BOARD; THAT THE RESPONDENT COULD SUFFER NO REAL PREJUDICE IF THE AMENDMENT WERE PERMITTED SINCE IT KNEW THE REAL NATURE OF THE COMPLAINT MADE AGAINST IT AND HAD ADEQUATE OPPORTUNITY TO PREPARE ITS DEFENCE; AND THAT, HAVING REGARD TO THE SERIOUSNESS OF THE SITUATION AND THE PUBLIC INTEREST INVOLVED IN THE MATTER, THE BOARD SHOULD NOT BE CONCERNED WITH TECHNICALITIES BUT SHOULD PERMIT THE AMENDMENT.

5. COUNSEL FOR THE RESPONDENT TOOK THE POSITION THAT THE BOARD WAS NOT HERE FACED WITH THE QUESTION OF DEFECT IN FORM BUT A MATTER OF REAL SUBSTANCE. HE SUBMITTED THAT, IN EFFECT, THE APPLICANT WAS SEEKING LEAVE TO FILE A NEW AND COMPLETELY DIFFERENT APPLICATION, THAT IS, ONE UNDER AN ENTIRELY DIFFERENT ACT AND THAT THE APPLICANT SHOULD BE REQUIRED TO FILE A NEW APPLICATION IF IT INTENDED TO PROCEED UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. HE SUBMITTED THAT TO PERMIT THE AMENDMENT WOULD RESULT IN A REAL PREJUDICE TO THE RESPONDENT. HE POINTED OUT, FURTHER, THAT THE NOTICE OF MOTION SEEKING PROHIBITION AGAINST THE BOARD WAS ONE OF REAL SUBSTANCE. HE TOOK THE POSITION THAT THERE WAS A DIFFERENT QUESTION OF LAW TO BE DECIDED, NAMELY WHETHER SECTION 8 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT SUPPLANTS SECTION 63 OF THE LABOUR RELATIONS ACT.

6. UNQUESTIONABLY THE NOTICE OF MOTION RAISES A PROBLEM AS TO WHETHER A STRIKE INVOLVING HOSPITAL EMPLOYEES IS ONE THAT SHOULD BE DEALT WITH UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT OR PARTLY UNDER THE LABOUR RELATIONS ACT AND PARTLY UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. IF SECTION 8 OF THE LATTER ACT DOES SUPPLANT SECTION 63 OF THE LABOUR RELATIONS ACT, THEN APPLICATIONS TO THE BOARD CONCERNING UNLAWFUL STRIKES OF HOSPITAL EMPLOYEES WOULD BE MADE UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, IN VIEW OF SECTION 2 OF THE LATTER ACT. ON THE OTHER HAND, IF SECTION 63 OF THE LABOUR RELATIONS ACT IS THE APPLICABLE SECTION, AT ALL EVENTS UP TO THE TIME THAT THE MINISTER ISSUES A NO BOARD REPORT OR RELEASES THE REPORT OF A CONCILIATION BOARD, THEN IT MAY BE ARGUABLE THAT AN APPLICATION UP TO THAT TIME INVOLVING A STRIKE OF HOSPITAL EMPLOYEES COULD BE MADE UNDER THE LABOUR RELATIONS ACT. ON THE OTHER HAND, IF THE PRESENT APPLICATION IS VIEWED AS ONE MADE UNDER BOTH ACTS, THE PROBLEM AS TO WHICH ACT IS APPLICABLE DOES NOT ARISE, IN ANY EVENT, AT THIS STAGE OF THE PROCEEDINGS.

7. AFTER CONSIDERING THE SUBMISSIONS OF COUNSEL FOR BOTH PARTIES, AND PARTICULARLY IN VIEW OF THE NATURE OF THE ALLEGATIONS WITH WHICH WE ARE HERE CONCERNED, THE FACT THAT THE APPLICATION CONCERNS AN ALLEGED STRIKE WHICH AFFECTS A HOSPITAL AND THE OBVIOUS INVOLVEMENT OF THE PUBLIC INTEREST IF THE ALLEGATIONS ARE TRUE, WE ARE OF THE OPINION THAT WE SHOULD TREAT THE APPLICATION AS ONE INTENDED TO BE BROUGHT UNDER BOTH THE LABOUR RELATIONS ACT AND THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. WE AGREE WITH COUNSEL FOR THE APPLICANT THAT THE BOARD OUGHT NOT TO TAKE A NARROW, TECHNICAL VIEW OF ITS POWERS AND JURISDICTION AND RELY ON TECHNICAL OBJECTIONS WHICH WOULD RESULT IN THE BOARD DECLINING TO HEAR A MATTER OF SUCH SERIOUS CONCERN, PARTICULARLY WHERE THERE IS A DIFFICULT QUESTION AS TO THE EXACT RELATIONSHIP OF THE TWO ACTS IN MATTERS OF BOTH SUBSTANCE AND PROCEDURE UNDER EACH ACT. IF, AS ALLEGED BY THE RESPONDENT, THIS DECISION IS PREJUDICIAL TO IT, AND WE ARE NOT CONVINCED THAT THAT IS THE CASE, WE THINK THAT THIS PREJUDICE CAN BE OVERCOME BY ADJOURNING THIS CASE UNTIL THURSDAY, JULY 20TH, 1972 AT 9:30 A.M. AT THAT TIME THE BOARD IS SCHEDULED TO HEAR ANOTHER APPLICATION INVOLVING THE PRESENT APPLICANT AND CERTAIN OFFICERS OF THE RESPONDENT AND EMPLOYEES OF THE APPLICANT. IT MAY BE THAT THESE MATTERS CAN BE HEARD TOGETHER OR, IF NOT, THEN THE PRESENT APPLICATION WILL BE HEARD FIRST.

8. ACCORDINGLY, PURSUANT TO SECTION 58 OF THE BOARD'S RULES OF PROCEDURE AND SECTION 9 OF O. REG. 441, THE BOARD GRANTS LEAVE TO THE APPLICANT TO AMEND ITS APPLICATION AS REQUESTED AND SUCH APPLICATION IS ACCORDINGLY SO AMENDED. THIS DECISION WILL SERVE AS FORMAL NOTICE TO THE RESPONDENT THAT THE APPLICATION HAS BEEN SO AMENDED. THE RESPONDENT WILL BE ENTITLED TO FILE A NEW OR AMENDED REPLY AS IT SEES FIT UP TO THE COMMENCEMENT OF THE HEARING ON THURSDAY NEXT.

9. IF THERE IS ANY DOUBT AS TO THE BOARD'S JURISDICTION TO PROCEED WITH THIS MATTER IN VIEW OF THE NOTICE OF MOTION WHICH HAS BEEN

SERVED ON THE BOARD BY THE RESPONDENT, WE HAVE DECIDED, IN ALL THE CIRCUMSTANCES, AND IN PARTICULAR THE OBVIOUS QUESTION OF PUBLIC INTEREST WHICH IS INVOLVED AND, FURTHER, THE FACT THAT ANY DECISION OF THE BOARD IS DECLARATORY ONLY, THAT WE SHOULD HEAR THE APPLICATION. AS TO OUR AUTHORITY TO DO SO, REFERENCE IS MADE TO THE DECISION OF ARNUP J.A. IN THE CEDARVALE TREE SERVICES LIMITED CASE, 71 CLLC ¶14,087.

2275-72-U: THE TORONTO WESTERN HOSPITAL (APPLICANT) V. CYRIL JONES, ANTONIO MAONE, HERNANDO CORONELL, JOHN BOYD, ALFREDO MORELLI, EVA POMBO, MARIA CABRAL, IRENE BIMANN AND MICHAEL DYAL (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J. D. BELL.

APPEARANCES AT THE HEARING: R. B. POTTER AND D. S. AFFLECK FOR THE APPLICANT AND G. C. MILLER AND H. C. MCLACHLAN FOR THE RESPONDENTS.

DECISION OF THE BOARD: JULY 24, 1972.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT A STRIKE ENGAGED IN BY EMPLOYEES OF THE APPLICANT IS UNLAWFUL. THIS CASE WAS SCHEDULED TO BE HEARD FOLLOWING AN EARLIER APPLICATION BROUGHT BY THE APPLICANT AGAINST CANADIAN UNION OF GENERAL EMPLOYEES (BOARD FILE NO. 2262-72-U) IN WHICH THE APPLICANT IN THAT CASE SOUGHT A DECLARATION THAT THE UNION HAD CALLED OR AUTHORIZED AN UNLAWFUL STRIKE OF ITS EMPLOYEES. THE PRESENT CASE ARISES OUT OF THE SAME SERIES OF EVENTS WHICH WERE THE SUBJECT MATTER OF THE EARLIER APPLICATION.

2. AT THE CONCLUSION OF THE HEARING IN THE EARLIER CASE IT WAS AGREED BY COUNSEL FOR BOTH PARTIES (COUNSEL FOR THE UNION BEING ALSO COUNSEL FOR THE EMPLOYEES IN THE PRESENT CASE) THAT THE EVIDENCE AND ARGUMENTS HEARD IN THE CASE AGAINST THE UNION WOULD APPLY IN THE PRESENT CASE. IT WAS ALSO AGREED THAT THE FACT THAT THE REPLY IN THE PRESENT CASE DID NOT ANSWER THE SPECIFIC ALLEGATIONS MADE IN THE APPLICATION WOULD NOT CONSTITUTE AN ADMISSION AS TO THOSE ALLEGATIONS BY THE RESPONDENTS.

3. COUNSEL FOR THE APPLICANT HAD EARLIER SERVED NOTICE THAT HE WOULD SEEK LEAVE OF THE BOARD TO AMEND HIS APPLICATION IN THE SAME WAY AS WAS DONE IN THE EARLIER PROCEEDING. THIS MOTION WAS MADE AT THE CONCLUSION OF THE EARLIER PROCEEDING AND IT WAS AGREED THAT THE ARGUMENTS MADE IN CONNECTION WITH THE MOTION TO AMEND IN THE FIRST CASE WOULD APPLY HERE. HAVING RECONSIDERED THOSE ARGUMENTS AND FOR THE REASONS GIVEN IN OUR DECISION DATED JULY 18, 1972 IN BOARD FILE NO. 2262-72-U AND PURSUANT TO SECTION 58 OF THE BOARD'S RULES OF PROCEDURE AND SECTION 9 OF O. REG. 441 MADE UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, THE BOARD GRANTS LEAVE TO THE APPLICANT TO AMEND ITS APPLICATION AS REQUESTED AND SUCH APPLICATION IS ACCORDINGLY SO AMENDED.

4. IN THIS APPLICATION THE APPLICANT NAMED AS RESPONDENTS ONLY THE EMPLOYEE MEMBERS OF THE UNION NEGOTIATING COMMITTEE, ALTHOUGH IT SEEKS A DECLARATION AGAINST ALL EMPLOYEES ALLEGED TO HAVE ENGAGED IN THE STRIKE. PRESUMABLY THE APPLICANT WAS RELYING ON THE FALCONBRIDGE NICKEL MINES LIMITED CASE, Vol 2, CLLC ¶16,180, IN DRAFTING ITS APPLICATION. IN ANY EVENT, NO ATTEMPT WAS MADE IN EVIDENCE TO IDENTIFY INDIVIDUAL EMPLOYEES AS BEING ON STRIKE OTHER THAN SOME OF THE MEMBERS OF THE NEGOTIATING COMMITTEE. THE EVIDENCE WITH RESPECT TO THOSE ACTUALLY IDENTIFIED WAS OF A SOMEWHAT GENERAL NATURE, BEING SPECIFIC AS TO ONLY ONE OCCASION. IN THESE CIRCUMSTANCES, THERE IS NO GROUND FOR NAMING SPECIFIC INDIVIDUALS IN THIS CASE, IF A DECLARATION WERE TO ISSUE.

5. HAVING REGARD TO ALL THE EVIDENCE BEFORE US AND TO THE REPRESENTATIONS OF COUNSEL AND FOR THE REASONS GIVEN IN OUR DECISION OF EVEN DATE IN BOARD FILE No. 2262-72-U, THE BOARD FINDS THAT THE EMPLOYEES OF THE APPLICANT IN THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND CANADIAN UNION OF GENERAL EMPLOYEES WHICH EXPIRED ON JULY 5, 1972 WHO REFUSED TO WORK COMMENCING AT 5:00 A.M. ON JULY 12, 1972 AND THEREAFTER, ENGAGED IN A STRIKE WITHIN THE MEANING OF SECTION 1(1)(M) OF THE LABOUR RELATIONS ACT. PURSUANT TO ITS POWERS UNDER SECTION 82 OF THE LABOUR RELATIONS ACT AND SECTION 8(3) OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, THE BOARD DECLARES THAT SUCH STRIKE IS CONTRARY TO SECTION 8(1) OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT AND IS THEREFORE UNLAWFUL.

2185-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. SAINT PAUL UNIVERSITY OPERATING UNDER THE NAME OF NOVALIS (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

APPEARANCES AT THE HEARING: W. A. ACTON, RAYMOND ARSENAULT AND MICHEL HOTTE FOR THE APPLICANT; DAVID DEHLER, ELZEAR BELIVEAU AND YVES MASSE FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 24, 1972.

1. THE NAME "NOVALIS (UNIVERSITE SAINT PAUL)" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "SAINT PAUL UNIVERSITY OPERATING UNDER THE NAME OF NOVALIS".

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT IS SEEKING BARGAINING RIGHTS ON BEHALF OF ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT. IN ADDITION TO THOSE PERSONS EMPLOYED IN

OTTAWA, THE APPLICANT IS ALSO SEEKING TO REPRESENT THREE FIELD SALES REPRESENTATIVES AND TWO MEMBERS OF THE RESPONDENT'S CLERICAL STAFF EMPLOYED AND RESIDENT IN MONTREAL AT ITS "MONTREAL SERVICES BRANCH."

4. HAVING REGARD TO THESE CIRCUMSTANCES, WE FIND THAT WE HAVE NO JURISDICTION TO ENTERTAIN THIS APPLICATION INSOFAR AS IT RELATES TO THE MONTREAL-BASED EMPLOYEES. IN OUR OPINION, WE FIND THAT THE PRINCIPLES AS SET OUT IN THE LABOUR RELATIONS BOARD OF NEW BRUNSWICK V. EASTERN BAKERIES LTD. AND LOCAL UNION #76, TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, HELPERS AND MISCELLANEOUS WORKERS AND ATTORNEY GENERAL OF NEW BRUNSWICK, [1961] 26 D.L.R. (2ND) 332, A DECISION OF THE SUPREME COURT OF CANADA, ARE APPLICABLE TO THE FACTS OF THE INSTANT CASE. IN UPHOLDING THE POSITION OF THE NEW BRUNSWICK LABOUR RELATIONS BOARD IN REJECTING THE COMPANY'S SUBMISSION THAT THE BARGAINING UNIT SHOULD ENCOMPASS EMPLOYEES ON ITS PAYROLL IN NOVA SCOTIA AND PRINCE EDWARD ISLAND TOGETHER WITH THE EMPLOYEES ENGAGED AT ITS MONCTON PLANT IN NEW BRUNSWICK, THE COURT AT PAGE 336 STATED:

"THERE IS NO EVIDENCE AS TO WHERE THE HIRING OF THE RESIDENT EMPLOYEES IN NOVA SCOTIA OR PRINCE EDWARD ISLAND OCCURRED BUT IT DOES NOT ADVANCE THE CASE FOR THE RESPONDENT IF IT TOOK PLACE AT MONCTON. THE NEW BRUNSWICK LABOUR RELATIONS BOARD CAN HAVE NO JURISDICTION OVER PERSONS RESIDING AND WORKING OUTSIDE THAT PROVINCE SO AS TO DECLARE THAT THEY ARE PART OF THE MEMBERSHIP OF A UNIT OF THE COMPANY'S EMPLOYEES RESIDING AND WORKING IN NEW BRUNSWICK. THE FACT OF PROXIMITY IN THE PRESENT INSTANCE DOES NOT DISTINGUISH IT FROM THE CASE WHERE EMPLOYEES OF A COMPANY IN TORONTO MAY DO SIMILAR WORK TO THAT OF OTHER EMPLOYEES OF THE SAME COMPANY IN THE SAME CATEGORY RESIDING AND WORKING IN MONTREAL. SUCH LATTER EMPLOYEES COULD NOT BE INCLUDED BY AN ONTARIO LABOUR RELATIONS BOARD UNDER SIMILAR LEGISLATION IN ONTARIO FOR THE PURPOSE OF DECLARING A BARGAINING UNIT."

5. MR. N. J. HARPER, EXAMINER, IS ACCORDINGLY AUTHORIZED TO INQUIRE INTO AND REPORT BACK TO THE BOARD ON THE LIST OF EMPLOYEES AND THE COMPOSITION OF THE BARGAINING UNIT AS IT RELATES TO THE OPERATIONS OF THE RESPONDENT CONDUCTED AT OTTAWA.

6. WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, MR. N. J. HARPER IS FURTHER AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF:

- A) THOSE PERSONS CLASSIFIED BY THE RESPONDENT AS OFFICE SUPERVISORS;

- B) THOSE PERSONS CLASSIFIED BY THE RESPONDENT AS PERSONS ABOVE THE RANK OF SUPERVISOR, UP TO BUT NOT INCLUDING PERSONS CLASSIFIED BY THE RESPONDENT AS "DEPARTMENT HEADS";
- C) PERSONS CLASSIFIED BY THE RESPONDENT AS "FIELD SALES REPRESENTATIVES."

2262-72-U: THE TORONTO WESTERN HOSPITAL (APPLICANT) V. CANADIAN UNION OF GENERAL EMPLOYEES (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J. D. BELL.

APPEARANCES AT THE HEARING: R. B. POTTER AND D. S. AFFLECK FOR THE APPLICANT, AND G. C. MILLER AND H. C. MCLACHLAN FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 24, 1972.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT A STRIKE CALLED OR AUTHORIZED BY THE RESPONDENT IS UNLAWFUL. THIS MATTER CAME ON FOR HEARING ON TUESDAY, JULY 18, 1972 AT WHICH TIME CERTAIN PRELIMINARY MOTIONS WERE ARGUED AND LATER THAT DAY THE BOARD RENDERED ITS DECISION ON THESE MOTIONS, BOTH ORALLY AND IN WRITING. THE RESULT WAS, INTER ALIA, THAT THE APPLICATION WAS ADJOURNED TO THURSDAY, JULY 20.

2. AT THE COMMENCEMENT OF THE PROCEEDINGS ON THURSDAY COUNSEL FOR THE RESPONDENT AGAIN MOVED THE BOARD TO ENLARGE THE PROCEEDINGS, AND THIS MOTION WAS DENIED FOR THE FOLLOWING REASONS WHICH WERE DELIVERED ORALLY AT THE HEARING:

"WE HAVE CONSIDERED THE REPRESENTATIONS OF THE PARTIES IN CONNECTION WITH THE RESPONDENT'S COUNSELS' MOTION TO ENLARGE THESE PROCEEDINGS. THE MOTION IS BASED ON TWO GROUNDS:

- (1) BECAUSE OF THE NOTICE OF MOTION FOR JUDICIAL REVIEW SERVED ON THE BOARD JUST PRIOR TO THE COMMENCEMENT OF THESE PROCEEDINGS; AND
- (2) IN THE GENERAL EXERCISE OF OUR DISCRETION IN ORDER TO ENABLE THE PARTIES TO COMMENCE BARGAINING AS REQUIRED UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT.

IN EITHER CASE COUNSEL REQUESTS THE BOARD TO ISSUE A BARGAINING ORDER.

IN ESSENCE, THE ARGUMENTS ADVANCED IN SUPPORT

OF THE FIRST GROUND OF THE MOTION WERE DEALT WITH BY THE BOARD IN ITS DECISION DATED JULY 18, AND WE SEE NO REASON TO DEPART FROM THAT DECISION, PARTICULARLY WHEN THE NOTICE OF MOTION IN THE PRESENT CASE IS NOT RETURNABLE UNTIL SEPTEMBER 5, 1972.

AS TO THE SECOND GROUND, WE THINK THE PRINCIPLES APPLICABLE UNDER PRESENT BOARD POLICY ARE MORE CLEARLY SET OUT IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, VOL. 2, CLLC ¶16,180, RATHER THAN THE ARVO TUOMI CASE, 53 CLLC ¶17,052. WE ACCORDINGLY DENY THE REQUEST FOR AN ENLARGEMENT. WE WOULD ADD WE DO NOT CONSIDER WE HAVE JURISDICTION TO DIRECT THE PARTIES TO MEET AND BARGAIN IN A PROCEEDING OF THIS NATURE."

3. AS WILL APPEAR FROM OUR DECISION DATED JULY 18, 1972 THE BOARD FOUND THE APPLICATION AS ONE INTENDED TO BE BROUGHT UNDER BOTH THE LABOUR RELATIONS ACT AND THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. ON WEDNESDAY, JULY 19 COUNSEL FOR THE APPLICANT SERVED NOTICE THAT HE WAS NOT INTENDING TO RELY ON SECTION 63 OF THE LABOUR RELATIONS ACT. AT THE ADJOURNED HEARING ON THURSDAY, JULY 20 COUNSEL FOR THE RESPONDENT SOUGHT TO OBTAIN FROM COUNSEL FOR THE APPLICANT A DECLARATION AS TO WHICH ACT HE WAS PROCEEDING UNDER, BUT THE BOARD DECLINED TO FORCE COUNSEL TO MAKE SUCH AN ELECTION AT THAT STAGE OF THE PROCEEDINGS. THIS MATTER WILL BE REFERRED TO LATER IN THESE REASONS. FOLLOWING THE DISPOSITION OF ALL PRELIMINARY OBJECTIONS AND MOTIONS, THE BOARD THEN PROCEEDED TO HEAR EVIDENCE AND ARGUMENT ON THE MERITS OF THE APPLICATION.

4. THE EVIDENCE ESTABLISHES THAT THE APPLICANT AND RESPONDENT WERE PARTIES TO A COLLECTIVE AGREEMENT (EXHIBIT 1) WHICH EXPIRED ON JULY 5, 1972. THE EMPLOYEES COVERED BY THE AGREEMENT, AND NUMBERING APPROXIMATELY 675 OUT OF A TOTAL HOSPITAL COMPLEMENT OF APPROXIMATELY 2,400 COMPRISED SERVICE EMPLOYEES IN THE DIETARY AND HOUSEKEEPING DEPARTMENTS, MAINTENANCE PERSONNEL AND MALE ATTENDANTS AND NURSING ASSISTANTS. IT IS CLEAR, AND THE BOARD SO FINDS, THAT THE APPLICANT IS A HOSPITAL WITHIN THE MEANING OF SECTION 1(1)(A) OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT AND THAT THE EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT ARE HOSPITAL EMPLOYEES WITHIN THE MEANING OF SECTION 1(1)(B) OF THE SAID ACT.

5. PRIOR TO THE EXPIRY OF THE COLLECTIVE AGREEMENT (EXHIBIT 1) THE RESPONDENT UNION HAD SERVED NOTICE TO BARGAIN ON THE APPLICANT THIS NOTICE LED TO A MEETING OF THE PARTIES ON MAY 18, 1972 WHICH IN TURN LED TO THE APPOINTMENT OF A CONCILIATION OFFICER UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT. THE OFFICER MET WITH THE PARTIES ON JULY 4 AND THERE WERE FURTHER MEETINGS CALLED BY THE CONCILIATION BRANCH OF THE DEPARTMENT OF LABOUR ON JULY 6 AND 7 THOUGH, APPARENTLY, NOT WITH THE ORIGINAL OFFICER APPOINTED TO DEAL WITH THE DISPUTE. THERE WAS A FURTHER MEETING BETWEEN THE PARTIES DURING THE NIGHT OF JULY 11-

12 WHICH COMMENCED ABOUT 11:30 ON THE NIGHT OF JULY 11 AND CONTINUED UNTIL JUST PRIOR TO 5:00 A.M. ON THE MORNING OF JULY 12. THIS MEETING RESULTED FROM A TELEPHONE REQUEST BY MR. MURPHY, THE PRESIDENT OF THE RESPONDENT UNION, TO MR. MCAULAY, THE EXECUTIVE DIRECTOR OF THE APPLICANT. MR. MCAULAY HAD HAD INTIMATIONS THAT A WORK STOPPAGE MIGHT TAKE PLACE SOME TIME ON JULY 11 OR 12. WHETHER THIS FEAR WAS REASONABLE OR NOT (AND WE DO NOT FIND IT NECESSARY TO FIND WHETHER THE EVIDENCE SUPPORTS HIS BELIEF) HE CLEARLY HELD SUCH BELIEF AND, ACCORDINGLY, AGREED TO MEET ONLY SO LONG AS A WORK STOPPAGE DID NOT OCCUR. ACCORDING TO HIS EVIDENCE, MR. MURPHY AGREED TO THIS. SHORTLY BEFORE 5:00 A.M. THE NEGOTIATING COMMITTEE OF THE RESPONDENT WHICH HAD BEEN CONSIDERING A WRITTEN PROPOSAL PUT FORWARD BY THE APPLICANT, LEFT THE HOSPITAL, CLOSELY FOLLOWED BY MR. MURPHY. IT IS NOT CLEAR WHETHER OR NOT A REPRESENTATIVE OF THE CONCILIATION BRANCH WAS PRESENT AT THIS LAST MEETING. THE PRESENT APPLICATION WAS FILED WITH THE BOARD AFTER ITS CLOSING HOURS ON JULY 12. ON SOME DATE AFTER JULY 12 THE PARTIES WERE INFORMED BY THE MINISTER OF LABOUR, PURSUANT TO SECTION 18 OF THE LABOUR RELATIONS ACT THAT HE DID NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD. WHILE IT IS NOT CLEAR FROM THE EVIDENCE AS TO THE EXACT DATE OF THE "NO-BOARD" REPORT, IT IS CLEAR THAT SECTION 3 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT DID NOT COME INTO OPERATION UNTIL AFTER THE FILING OF THIS APPLICATION.

6. ON THE MORNING OF JULY 12 SOME 325 TO 350 EMPLOYEES IN THE BARGAINING UNIT COVERED BY THE COLLECTIVE AGREEMENT WERE SCHEDULED TO REPORT TO WORK AT THE APPLICANT'S PREMISES, COMMENCING AT 5:00 A.M. THROUGH UNTIL APPROXIMATELY 9:00 A.M., WITH THE MAJORITY DUE TO REPORT FOR DUTY AT 7:30 A.M. OVER THE 24-HOUR PERIOD COMMENCING AT 5:00 A.M. APPROXIMATELY 550 EMPLOYEES IN THE UNIT WERE SCHEDULED TO REPORT FOR WORK. WITHIN MINUTES OF THE BREAK-UP OF THE BARGAINING SESSION SHORTLY BEFORE 5:00 A.M. ON JULY 12, PICKETERS CARRYING SIGNS APPEARED ON THE STREETS ADJOINING THE APPLICANT'S PREMISES. THESE PICKETS HAD COME FROM A HALL IMMEDIATELY TO THE WEST OF THE HOSPITAL. BY 9:00 A.M. ONLY ABOUT 50 OF THE 325 TO 350 EMPLOYEES IN THE BARGAINING UNIT HAD REPORTED FOR WORK, AND WITHIN THE 24-HOUR PERIOD COMMENCING AT 5:00 A.M. ON THE 12TH, ONLY 75, OF THE 550 SCHEDULED TO WORK, REPORTED FOR DUTY. SINCE THAT DATE UP TO THE DATE OF THE ADJOURNED HEARING, ONLY A SMALL NUMBER OF THOSE WHO FAILED TO REPORT FOR WORK ON JULY 12TH HAVE SOUGHT TO RETURN TO WORK, DESPITE A GENERAL PLEA BY THE RESPONDENT FOR THEM TO DO SO. THIS REQUEST WAS ON A LARGE SIGN PROMINENTLY DISPLAYED ON HOSPITAL GROUNDS ADJACENT TO THE PLACE WHERE EMPLOYEES WHO FAILED TO REPORT FOR WORK CAME TO PICK UP THEIR PAY OWING TO THEM FOR SOME PERIOD PRIOR TO JULY 12.

7. IT IS NECESSARY AT THIS POINT TO REFER TO THE TWO ACTS WITH WHICH WE ARE HERE CONCERNED. SECTIONS 2 AND 8 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT PROVIDE AS FOLLOWS:

2.-(1) THIS ACT APPLIES TO ANY HOSPITAL EM-

PLOYEES TO WHOM THE LABOUR RELATIONS ACT APPLIES, TO THE TRADE UNIONS AND COUNCILS OF TRADE UNIONS THAT ACT OR PURPORT TO ACT FOR OR ON BEHALF OF ANY SUCH EMPLOYEES, AND TO THE EMPLOYERS OF SUCH EMPLOYEES.

(2) EXCEPT AS MODIFIED BY THIS ACT, THE LABOUR RELATIONS ACT APPLIES TO ANY HOSPITAL EMPLOYEES TO WHOM THIS ACT APPLIES, TO THE TRADE UNIONS AND COUNCILS OF TRADE UNIONS THAT ACT OR PURPORT TO ACT FOR OR ON BEHALF OF ANY SUCH EMPLOYEES, AND TO THE EMPLOYERS OF SUCH EMPLOYEES.

* * *

8.(1) NOTWITHSTANDING ANYTHING IN THE LABOUR RELATIONS ACT, NO HOSPITAL EMPLOYEES TO WHOM THIS ACT APPLIES SHALL STRIKE AND NO EMPLOYER OF SUCH EMPLOYEES SHALL LOCK THEM OUT.

(2) NOTHING IN THIS SECTION PROHIBITS ANY SUSPENSION OR DISCONTINUATION FOR CAUSE OF THE OPERATIONS OF A HOSPITAL OR THE QUITTING OF EMPLOYMENT FOR CAUSE IF THE SUSPENSION, DISCONTINUATION OR QUITTING DOES NOT CONSTITUTE A LOCK-OUT OR STRIKE.

(3) SECTIONS 65, 66, 82 AND 83 OF THE LABOUR RELATIONS ACT APPLY MUTATIS MUTANDIS TO A STRIKE OF HOSPITAL EMPLOYEES TO WHOM THIS ACT APPLIES OR TO A LOCK-OUT BY THEIR EMPLOYERS.

IT IS CLEAR FROM THESE TWO SECTIONS AND FROM OTHER SECTIONS OF THIS ACT, FOR EXAMPLE SECTIONS 3, 5(16), 7(1) AND 11, THAT THERE IS A CLOSE RELATIONSHIP, ALMOST AN INTERMESHING, OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT AND THE LABOUR RELATIONS ACT. THE COLLECTIVE BARGAINING AND LABOUR RELATIONS OF HOSPITALS, THEIR EMPLOYEES AND TRADE UNIONS HAVING OR ATTEMPTING TO OBTAIN A BARGAINING RELATIONSHIP WITH HOSPITALS AND THEIR EMPLOYEES ARE GOVERNED BY THESE TWO STATUTES. THUS, IN THE PRESENT CASE THE DEFINITION OF "STRIKE" IS TO BE FOUND IN SECTION 1 (1)(M) OF THE LABOUR RELATIONS ACT, THE PROHIBITION AGAINST STRIKES IS TO BE FOUND IN SECTION 8(1) OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, THE PROHIBITION AGAINST A TRADE UNION CALLING OR AUTHORIZING A STRIKE OF HOSPITAL EMPLOYEES IS TO BE FOUND IN SECTION 65 OF THE LABOUR RELATIONS ACT WHICH, HOWEVER, IS BY SECTION 8(3) OF THE OTHER ACT MADE TO APPLY MUTATIS MUTANDIS TO A STRIKE OF HOSPITAL EMPLOYEES TO WHOM THAT ACT APPLIES, AND THE SAME IS TRUE WITH RESPECT TO THE BOARD'S POWER TO ISSUE STRIKE DECLARATIONS AS GIVEN BY SECTION 82 OF THE LABOUR RELATIONS ACT. THIS INTERWEAVING OF LEGISLATION MUST BE KEPT IN MIND IN CONSIDERING WHAT FOLLOWS IN THIS DECISION AND WILL BE REFERRED TO AGAIN LATER ON IN THIS DECISION.

8. AS WE FOUND ABOVE, A VERY SUBSTANTIAL NUMBER OF EMPLOYEES IN THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES, WHICH EXPIRED ON JULY 5, 1972, FAILED TO REPORT FOR WORK, ALTHOUGH SCHEDULED TO DO SO, STARTING WITH THE SHIFT COMMENCING AT 5:00 A.M. ON JULY 12, 1972, AND MOST OF THESE EMPLOYEES HAVE CONTINUED TO FAIL TO REPORT FOR WORK UP TO JULY 20. A NUMBER OF THE MEMBERS OF THE NEGOTIATING TEAM, WHO WERE BARGAINING WITH THE APPLICANT ON THE NIGHT OF JULY 11-12, WERE IDENTIFIED IN EVIDENCE AS BEING PICKETERS AT ABOUT 6:30 A.M. ON THE MORNING OF JULY 12. THESE PERSONS WERE EMPLOYEES OF THE HOSPITAL IN THE BARGAINING UNIT. IN ADDITION TO BEING ON THE NEGOTIATING TEAM, SOME WERE ALSO SHOP STEWARDS. MR. MURPHY, THE GENERAL PRESIDENT OF THE RESPONDENT UNION, WHO WAS ALSO ON THE NEGOTIATING TEAM, WAS ALSO IDENTIFIED AS BEING ON THE PICKET LINES EARLY THAT MORNING CARRYING A PLACARD. WHEN THIS EVIDENCE IS CONSIDERED, ALONG WITH THE EVENTS IMMEDIATELY PRECEDING THE FAILURE TO REPORT FOR WORK, THAT IS, THE BREAKING UP OF THE BARGAINING SESSION, THE DEPARTURE OF THE UNION NEGOTIATING COMMITTEE, AND THE APPEARANCE OF PICKETS WITHIN MINUTES THEREAFTER ON THE STREET, NUMBERING, ACCORDING TO THE EVIDENCE, SOME 200 AT 6:30 A.M., WE HAVE NO HESITATION IN FINDING THAT A VERY SUBSTANTIAL NUMBER OF EMPLOYEES OF THE APPLICANT IN THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES, WHICH EXPIRED ON JULY 5, 1972, REFUSED TO WORK OR TO CONTINUE TO WORK IN COMBINATION OR IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING AND, WITH THE EXCEPTION OF A SMALL NUMBER, HAVE CONTINUED TO DO SO UP TO JULY 20, 1972. WE SHOULD ADD THAT THERE IS NO EVIDENCE OF ANY KIND BEFORE US WHICH WOULD SUGGEST THAT ANY OF THE EMPLOYEES QUIT THE EMPLOYMENT OF THE APPLICANT FOR CAUSE WITHIN THE MEANING OF SECTION 8(2) OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. WE THEREFORE FIND THAT SUCH EMPLOYEES HAVE ENGAGED IN A STRIKE WITHIN THE MEANING OF SECTION 1(1)(M) OF THE LABOUR RELATIONS ACT.

9. AS WAS POINTED OUT ABOVE, THE PRESENT APPLICATION IS ONE BROUGHT UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, AS WELL AS UNDER THE LABOUR RELATIONS ACT. LEAVING ASIDE FOR THE MOMENT THE QUESTION AS TO WHETHER THIS APPLICATION CONSTITUTES ONE OR TWO APPLICATIONS, IT IS CLEAR FROM SECTION 8(1) OF THE FORMER ACT AS QUOTED ABOVE THAT HOSPITAL EMPLOYEES TO WHOM THAT ACT APPLIES ARE FORBIDDEN TO STRIKE. IT FOLLOWS, THEREFORE, THAT THE STRIKE ENGAGED IN BY THE EMPLOYEES DESCRIBED IN THE PRECEDING PARAGRAPH IS AN UNLAWFUL STRIKE, CONTRARY TO THE PROVISIONS OF SECTION 8(1) OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT.

10. IN THE PRESENT CASE THE APPLICANT SEEKS A DECLARATION THAT THE RESPONDENT UNION CALLED OR AUTHORIZED SUCH STRIKE. WE HAVE NO HESITATION IN FINDING THAT THE EVIDENCE FALLS FAR SHORT OF SUPPORTING A FINDING THAT THE RESPONDENT CALLED THE STRIKE IN QUESTION. COUNSEL FOR THE APPLICANT, HOWEVER, PLACED MORE STRESS ON THE WORD "AUTHORIZED". THERE IS NO DOUBT THAT, IN CASES FALLING UNDER THE LABOUR RELATIONS ACT, THIS BOARD HAS DISTINGUISHED THE TWO WORDS AS THEY APPEAR IN SECTION 65 OF THE LATTER ACT. THERE HAVE BEEN A NUMBER OF CASES WHERE THE BOARD

HAS FOUND THAT THE CONDUCT OF UNION OFFICIALS FOLLOWING THE COMMENCEMENT OF THE STRIKE HAS AMOUNTED TO AUTHORIZING THE STRIKE. SEE FOR EXAMPLE THE WESTEEL-ROSCOE LIMITED CASE, OLRB M.R. JULY, 1967, P. 365. SINCE SECTION 65 APPLIES TO THE PRESENT CASE BY VIRTUE OF SECTION 8(3) OF THE HOSPITAL LABOUR DISPUTES ACT, THE SAME CONSIDERATIONS ARE APPLICABLE TO THIS CASE.

11. IN OUR VIEW, THE EVIDENCE IN THIS CASE SUPPORTS A FINDING THAT THE RESPONDENT UNION AUTHORIZED THE STRIKE. THUS, THERE IS THE UNREFUTED TESTIMONY (QUITE APART FROM THE PHOTOGRAPHS FILED WHICH WE HAVE NOT CONSIDERED SINCE THEY WERE NOT PROPERLY IDENTIFIED) THAT MR. MURPHY, THE PRESIDENT OF THE RESPONDENT UNION, WAS ON THE PICKET LINE AT THE COMMENCEMENT OF THE STRIKE CARRYING A PLACARD. FURTHER, MR. MURPHY WAS PRESENT ON THE LINE ON A REGULAR BASIS, INCLUDING THE NIGHT OF JULY 19, AT 11:30 P.M.. EARLY ON THE FIRST MORNING OF THE STRIKE A NUMBER OF THE MEMBERS OF THE NEGOTIATING TEAM WERE APPROACHED BY MR. MCAULAY AND HIS ASSISTANT DIRECTOR AND ASKED TO RETURN TO WORK AND TO DIRECT THE OTHER EMPLOYEES TO RETURN TO WORK, BUT THEY DID NOT DO SO. WHILE COUNSEL FOR THE RESPONDENT ARGUES THAT OFFICERS OF UNIONS MUST, OF NECESSITY, MAKE A SHOW OF SUPPORTING THE MEMBERS IN ORDER TO PERSUADE THEM TO RETURN TO WORK, THERE IS NO EVIDENCE THAT THIS WAS THE CASE HERE. THE RESPONDENT CHOSE NOT TO CALL EVIDENCE, AND SUCH MATTERS WERE PECULIARLY WITHIN THE KNOWLEDGE OF THE RESPONDENT. FINALLY, IT IS CLEAR FROM THE EVIDENCE ESTABLISHED IN CROSS-EXAMINATION BY THE RESPONDENT THAT IT WAS SEEKING TO MEET WITH THE APPLICANT AND COMMENCE FURTHER NEGOTIATION. THE APPLICANT'S POSITION WAS "GET THE EMPLOYEES BACK TO WORK AND WE WILL BE HAPPY TO MEET WITH YOU". AT NO TIME DID MR. MURPHY, WHO WAS SEEKING TO RE-OPEN NEGOTIATIONS, MAKE ANY SUGGESTION THAT HE WAS PREPARED TO URGE THE EMPLOYEES TO RETURN TO WORK. THAT HE HAD THIS POWER IS APPARENT FROM HIS TELEGRAM TO THE APPLICANT, OFFERING TO PROVIDE EMERGENCY SERVICES AS REQUIRED BY THE HOSPITAL IF THE APPLICANT WOULD MEET AND BARGAIN. HAVING REGARD TO THESE CONSIDERATIONS, WE HAVE NO HESITATION IN FINDING THAT THE RESPONDENT UNION AUTHORIZED THE STRIKE WITH WHICH WE ARE HERE CONCERNED.

12. IT WAS URGED BY COUNSEL FOR THE RESPONDENT THAT THE BOARD SHOULD DISMISS THE APPLICATION BECAUSE OF THE APPLICANT'S FAILURE TO PLEAD SECTION 65 OF THE LABOUR RELATIONS ACT, CONTRARY TO SECTION 47(1) OF THE BOARD'S RULES OF PROCEDURE, WHICH ARE MADE APPLICABLE TO PROCEEDINGS UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT BY VIRTUE OF SECTION 9 OF THE RULES OF PROCEDURE MADE UNDER THE LATTER ACT (ONTARIO REGULATION 441). WE FIND NO MERIT IN THIS SUBMISSION. IT IS CLEAR FROM THE FORM IN WHICH THE APPLICATION WAS FILED (AND AS AMENDED BY THE BOARD) THAT IS, FORM 22 UNDER THE LABOUR RELATIONS ACT AND FORM 1 UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, WHAT THE NATURE OF THE PROCEEDING IS AND THE RELIEF SOUGHT BY THE APPLICANT. THIS IS MADE DOUBLY CLEAR BY PARAGRAPH 2(h) OF THE APPLICATION. FINALLY, A READING OF SECTION 8(3) OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT REVEALS THAT THE ONLY SECTION WHICH COULD APPLY IS SECTION 65 OF THE LABOUR RELATIONS ACT. WE ACCORDINGLY REJECT THIS SUBMISSION OF THE RESPONDENT.

13. COUNSEL FOR THE RESPONDENT ALSO URGED THE BOARD TO EXERCISE ITS DISCRETION AND REFUSE TO GRANT THE DECLARATION. HIS SUBMISSIONS ON THIS POINT WERE BASED ON SECTION 4 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT WHICH PROVIDES:

4.-(1) SUBJECT TO SUBSECTION 2, IF THE PARTIES HAVE NOT MADE A COLLECTIVE AGREEMENT WITHIN SEVEN DAYS AFTER THE DAY ON WHICH THE MINISTER INFORMED THE PARTIES OR RELEASED THE REPORT AS MENTIONED IN SECTION 3, THE MATTERS IN DISPUTE BETWEEN THEM SHALL BE DECIDED BY ARBITRATION IN ACCORDANCE WITH THIS ACT.

(2) THE PARTIES BY AGREEMENT IN WRITING MAY EXTEND THE PERIOD OF SEVEN DAYS MENTIONED IN SUBSECTION (1) FOR ONE OR MORE FURTHER PERIODS OF TIME, NOT EXCEEDING A TOTAL OF THIRTY DAYS, AND THEREAFTER ANY FURTHER EXTENSION MAY BE MADE ONLY WITH THE CONSENT OF THE MINISTER.

IT WAS THE RESPONDENT'S CONTENTION THAT, SINCE THE APPLICANT HAD ATTACHED THE CONDITION OF RETURN TO WORK BEFORE PROCEEDING TO BARGAIN ONCE THE "NO BOARD" REPORT WAS ISSUED BY THE MINISTER AND HAD ALSO REFUSED TO AGREE TO EXTEND THE SEVEN-DAY PERIOD AS PROVIDED FOR IN SECTION 4(2), THE APPLICANT SHOULD NOT BE GRANTED A DECLARATION, PARTICULARLY WHERE THE RESPONDENT HAD OFFERED TO BARGAIN UNCONDITIONALLY. THE RESPONDENT SUBMITTED THAT THE PRIME CONCERN OF THE BOARD SHOULD BE TO GET THE PARTIES BACK TO THE BARGAINING TABLE, AND A DECLARATION WOULD NOT ASSIST IN THAT REGARD.

14. THERE IS NO QUESTION THAT THE BOARD'S POWER TO ISSUE DECLARATIONS UNDER SECTION 82 OF THE LABOUR RELATIONS ACT HAS CONTRIBUTED TO THE CAUSE OF INDUSTRIAL PEACE. WHEN A PARTY APPLIES FOR A DECLARATION ALLEGING AN UNLAWFUL WORK STOPPAGE AND THE RESPONDENTS ARE SERVED WITH NOTICE OF THE APPLICATION, THIS IS OFTEN SUFFICIENT TO BRING ABOUT A CESSATION OF THE WORK STOPPAGE AND A SETTLEMENT OF THE DISPUTE WHICH CAUSED IT. WHEN THIS OCCURS, THE BOARD, SUBJECT TO CERTAIN EXCEPTIONS NOT MATERIAL HERE, WILL REFUSE TO ISSUE THE DECLARATION REQUESTED. ON THE OTHER HAND, IF THE STOPPAGE IS CONTINUING AT THE TIME OF THE HEARING, AS IN THE PRESENT CASE, IT IS THE NORMAL PRACTICE TO ISSUE THE DECLARATION IF THE APPLICANT IS ENTITLED TO IT. SUCH A DECLARATION IS NOT TO BE REGARDED AS PUNITIVE BUT IS FOR THE INFORMATION OF EMPLOYEES, TRADE UNIONS AND EMPLOYERS THAT THE CONDUCT IN QUESTION IS UNLAWFUL. WHILE THERE HAVE BEEN OCCASIONS WHERE THE BOARD HAS REFUSED THE DECLARATION BECAUSE OF PROVOCATION ON THE PART OF THE EMPLOYER, THERE IS NO EVIDENCE IN THIS CASE THAT ACTIONS OF THE APPLICANT PROVOKED THE EMPLOYEES OR THE UNION INTO STRIKING. NOR DO WE THINK THE RESPONDENT UNION IN THIS CASE IS ENTITLED TO OVERLOOK ITS OWN CONDUCT IN SEEKING TO AVOID A DECLARATION BY RELYING ON SUBSEQUENT ALLEGED BAD FAITH ON THE PART OF THE APPLICANT. THE FACT OF THE MATTER IS, HOWEVER, THAT EVEN THIS ALLEGATION OF THE RESPONDENT IS OPEN TO QUESTION. WHILE WE DO NOT MAKE ANY FINAL PRONOUNCEMENT ON THIS POINT, IT SEEMS TO US THAT

SECTION 4 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT CONTEMPLATES THAT AT THE POINT OF THE BARGAINING NO STRIKE WILL HAVE TAKEN PLACE. WERE THIS NOT THE CASE, THE WHOLE PURPOSE OF THE ACT WOULD HAVE BEEN FRUSTRATED, THAT IS, TO PROVIDE FOR THE PEACEFUL SETTLEMENT OF HOSPITAL LABOUR DISPUTES. TO PERMIT THE UNION TO SAY, "YOU MUST BARGAIN WITH US UNDER THE ACT EVEN THOUGH WE ARE IN BREACH THEREOF" WOULD IN EFFECT DO AWAY WITH THE ACT. IN ANY EVENT, THE OBVIOUS QUESTIONS OF PUBLIC INTEREST WHICH ARE INVOLVED IN THIS CASE REQUIRE THE RESPONDENT TO ESTABLISH A VERY STRONG CASE FOR THE BOARD TO EXERCISE ITS DISCRETION TO REFUSE TO ISSUE A DECLARATION AND THE RESPONDENT HAS NOT, IN OUR OPINION, ESTABLISHED SUCH A CASE.

15. THERE REMAINS FOR CONSIDERATION THE QUESTION AS TO HOW WE SHOULD TREAT THE PRESENT APPLICATION. IN OUR EARLIER DECISION OF JULY 18 WE SAID THAT IT SHOULD BE TREATED AS ONE INTENDED TO BE BROUGHT UNDER BOTH ACTS. IN SO HOLDING WE DID NOT SAY THAT THE APPLICANT NECESSARILY HAD THE RIGHT TO BRING SUCH AN APPLICATION UNDER BOTH ACTS AND, INDEED, WE HAVE GRAVE DOUBTS AS TO WHETHER AN APPLICATION INVOLVING HOSPITAL EMPLOYEES CAN BE BROUGHT UNDER THE LABOUR RELATIONS ACT. ON THE OTHER HAND, THERE IS NO QUESTION THAT SUCH AN APPLICATION MAY BE BROUGHT UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT AND WE PROPOSE TO DEAL WITH THIS APPLICATION AS ONE BROUGHT UNDER THAT ACT. NOR DO WE THINK THAT AN APPLICATION MUST BE BROUGHT UNDER BOTH ACTS. THE RULES OF PROCEDURE MAKE NO PROVISION FOR THIS IN EITHER ACT AND THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT DOES NOT, IN OUR VIEW, CONTEMPLATE SUCH A PROCEEDING. IT MAY OF COURSE BE NECESSARY IN AN APPLICATION UNDER THE LATTER ACT TO RELY ON PROVISIONS OF THE LABOUR RELATIONS ACT, BUT THAT DOES NOT MEAN THAT THE APPLICATION IS ONE BROUGHT UNDER THAT ACT. IN PROCEEDING IN THIS FASHION, WE ARE UNABLE TO SEE HOW THE RESPONDENT HAS SUFFERED PREJUDICE. AS WE POINTED OUT EARLIER, IT CLEARLY KNEW THE CASE THAT HAD TO BE MET AND, IN FACT, COUNSEL FOR THE RESPONDENT PUT UP A SPIRITED AND VERY WELL PRESENTED CASE. WHILE ALLEGING THAT THE CASE HE HAD TO MEET WOULD BE DIFFERENT, DEPENDING ON WHAT ACT THE APPLICATION WAS BROUGHT UNDER, THIS POINT WAS NOT PARTICULARIZED AND, IN FACT, NO ARGUMENT WAS ADVANCED BY HIM TO SHOW THAT HIS CLAIM OF PREJUDICE WAS ANYTHING MORE THAN A CLAIM.

16. COUNSEL FOR THE APPLICANT SUBMITTED THAT THE BOARD SHOULD ISSUE TWO DECLARATIONS, ONE UNDER EACH ACT. IT IS OBVIOUS FROM THE PRECEDING PARAGRAPH THAT WE VERY MUCH DOUBT WHETHER COUNSEL IS ENTITLED TO SUCH RELIEF AND WE THEREFORE PROPOSE TO ACT ONLY UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT.

17. ACCORDINGLY, HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS AND FINDINGS, THE BOARD FINDS THAT THE EMPLOYEES OF THE APPLICANT IN THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES WHICH EXPIRED ON JULY 5, 1972 WHO REFUSED TO WORK COMMENCING AT 5:00 A.M. ON JULY 12, 1972 AND THEREAFTER ENGAGED IN A STRIKE WITHIN THE MEANING OF SECTION 1(1)(M) OF THE LABOUR RELATIONS ACT AND

PURSUANT TO ITS POWERS UNDER SECTION 82 OF THE LABOUR RELATIONS ACT AND SECTION 8(3) OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT THE BOARD DECLARES THAT SUCH STRIKE WAS CONTRARY TO SECTION 8(1) OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT AND THEREFORE UNLAWFUL AND THAT THE RESPONDENT UNION AUTHORIZED THE SAID STRIKE, CONTRARY TO SECTION 65 OF THE LABOUR RELATIONS ACT.

2189-72-M: SUPERIOR AMBULANCE SERVICE (EMPLOYER) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1464, C.L.C. (TRADE UNION).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: C. G. RIGGS AND DAVID TICKELL FOR THE EMPLOYER; S. R. HENNESSY AND C. S. DUNGEY FOR THE TRADE UNION.

DECISION OF THE BOARD: JULY 25, 1972.

1. THIS IS A REFERENCE FROM THE MINISTER OF LABOUR TO THE BOARD PURSUANT TO SECTION 96 OF THE LABOUR RELATIONS ACT. IN THIS REFERENCE THE MINISTER OF LABOUR REFERS TO THE BOARD THE QUESTION AS TO WHETHER HE HAS THE AUTHORITY UNDER THE LABOUR RELATIONS ACT TO APPOINT A CONCILIATION OFFICER.

2. ON FEBRUARY 23, 1972 THE BOARD ISSUED A CERTIFICATE TO THE CANADIAN UNION OF PUBLIC EMPLOYEES WITH RESPECT TO A BARGAINING UNIT OF EMPLOYEES OF SUPERIOR AMBULANCE SERVICE. ON MAY 29, 1972, THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1464, C.L.C. (HEREINAFTER REFERRED TO AS "LOCAL 1464") REQUESTED THE APPOINTMENT OF A CONCILIATION OFFICER.

3. AT THE HEARING IN THIS MATTER, SUPERIOR AMBULANCE SERVICE AND THE REPRESENTATIVE OF LOCAL 1464 AGREED THAT THE BARGAINING RIGHTS WITH RESPECT TO THE EMPLOYEES AFFECTED BY THIS REFERENCE WERE HELD BY THE CANADIAN UNION OF PUBLIC EMPLOYEES AND NOT BY LOCAL 1464.

4. HAVING REGARD TO THE FOREGOING, IT IS APPARENT THAT LOCAL 1464 IS NOT IN A POSITION TO REQUEST THE APPOINTMENT OF A CONCILIATION OFFICER IN THIS MATTER SINCE IT DOES NOT HAVE ANY BARGAINING RIGHTS WITH RESEPT TO THE EMPLOYEES OF SUPERIOR AMBULANCE SERVICE AFFECTED BY THIS APPLICATION. IN MAKING THIS STATEMENT, THE BOARD IS NOT TO BE TAKEN AS EXPRESSING ANY OPINION AS TO WHETHER OR NOT THE CANADIAN UNION OF PUBLIC EMPLOYEES HAS BARGAINING RIGHTS FOR THE EMPLOYEES AFFECTED BY THIS REFERENCE.

5. IN THE RESULT, THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER IS "NO".

1697-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) V. CANADIAN UNION OF COMMUNICATION WORKERS (INTERVENER #1) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER #2).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H. ADE AND O. HODGES.

DECISION OF THE BOARD: JULY 25, 1972.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE BOARD DIRECTED A SECOND REPRESENTATION VOTE IN ORDER TO DETERMINE THE TRUE WISHES OF THE EMPLOYEES FOR THE REASONS SET OUT IN THE BOARD'S DECISION DATED JUNE 20, 1972 IN THIS MATTER.

2. WHEN THE SECOND REPRESENTATION VOTE WAS COUNTED ON JUNE 28, 1972, IT WAS ASCERTAINED THAT OF THE 123 PERSONS WHOSE NAMES APPEARED ON THE REVISED VOTERS' LIST 118 CAST BALLOTS, OF WHOM 47 MARKED THEIR BALLOTS IN FAVOUR OF THE APPLICANT, 39 MARKED THEIR BALLOTS IN FAVOUR OF NO TRADE UNION AND 32 MARKED THEIR BALLOTS IN FAVOUR OF INTERVENER #2. FOR THE REASONS GIVEN BY THE BOARD IN ITS DECISIONS DATED APRIL 18, 1972 AND JUNE 20, 1972 IN THIS MATTER, THE BOARD FINDS THAT A THIRD REPRESENTATION VOTE WILL BE REQUIRED IN ORDER TO DETERMINE THE TRUE WISHES OF THE EMPLOYEES IN THIS MATTER.

3. THE BOARD ACCORDINGLY DIRECTS THAT A THIRD REPRESENTATION VOTE BE TAKEN PURSUANT TO THE PROVISIONS OF SECTION 92(5) OF THE ACT AND THAT REFERENCE TO INTERVENER #2 BE DELETED FROM THE BALLOT IN ACCORDANCE WITH THE PROVISIONS OF SECTION 92(6).

4. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

5. THE BOARD FURTHER DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE REPRESENTATION VOTE BE SEALED AND THAT THE BALLOTS NOT BE COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.

6. FOLLOWING THE TAKING OF THE THIRD REPRESENTATION VOTE THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING TO AFFORD THE RESPONDENT AN OPPORTUNITY TO ESTABLISH ITS RIGHT TO MAKE FURTHER REPRESENTATIONS ON THE COMPOSITION OF THE BARGAINING UNIT IN THIS MATTER AND ALL OUTSTANDING ISSUES.

7. THE MATTER IS REFERRED TO THE REGISTRAR.

2265-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. WAYNCO LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: JULY 25, 1972.

1. THE NAME "WAYNCO LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "WAYNCO LIMITED."

. . .

3. THE RESPONDENT FILED A REPLY, VARIOUS SCHEDULES CONTAINING THE NAMES OF TWENTY-SEVEN PERSONS IN ALL AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. THE PARTICULARS CONCERNING THE NAMES ON THE SCHEDULES ARE SET FORTH BELOW:

SCHEDULE A

COUNTY OF BRANT (2 NAMES)
COUNTY OF WATERLOO (17 NAMES)
COUNTY OF WELLINGTON (6 NAMES)

SCHEDULE D

COUNTY OF WATERLOO (2 NAMES)

. . .

5. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 103 OF THE LABOUR RELATIONS ACT.

6. THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED AS:

"ALL EMPLOYEES OF WAYNCO LTD., WORKING IN THE COUNTY OF WELLINGTON, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS, AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THE RANK OF NON-WORKING FOREMAN."

THE APPLICANT IS THEREFORE SEEKING CERTIFICATION ON BEHALF OF ITS REGULAR CRAFT UNIT IN REGULAR BOARD GEOGRAPHIC AREA #7 (WHICH IS THE COUNTY OF WELLINGTON). WHILE THE RESPONDENT APPEARS TO HAVE ITS BASE OF BUSINESS OPERATIONS IN THE TOWN OF HESPELER IN THE COUNTY OF WATERLOO AND TO HAVE BEEN ENGAGED ON THE DATE OF THE MAKING OF THIS APPLICATION IN ACTIVITIES IN THE CONSTRUCTION INDUSTRY IN THE COUNTIES OF WELLINGTON, WATERLOO, AND BRANT, THIS APPLICATION RELATES SOLELY TO THE COUNTY OF WELLINGTON.

7. THE RESPONDENT CLAIMS THAT THE UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING OUGHT TO BE DESCRIBED AS:

"ALL OPERATORS EMPLOYED BY THE RESPONDENT IN WATERLOO COUNTY, WELLINGTON COUNTY AND BRANT COUNTY."

8. IN PARAGRAPH 13 OF ITS REPLY THE RESPONDENT HAS STATED:

"THE RESPONDENT HAS ONE OFFICE LOCATED AT 230 BECHTEL STREET, HESPELER IN THE COUNTY OF WATERLOO AND HAS NO OTHER OFFICES. THE RESPONDENT EMPLOYS 26 BACK HOE, TRACTOR, TRENCHER AND BULLDOZER OPERATORS. THESE OPERATORS ARE NOT ASSIGNED TO ANY ONE COUNTY OR ANY ONE AREA AND THE OPERATORS WHO ARE WORKING IN WELLINGTON COUNTY ONE DAY MAY WORK IN WATERLOO COUNTY THE NEXT DAY AND VICE VERSA. MUCH OF THE RESPONDENT'S WORK, BOTH PRESENT AND PENDING IS ON PIPE LINE INSTALLATION AND INCLUDES WORK IN THE MUNICIPALITIES OF WATERLOO, GALT, GUELPH, HESPELER, ELORA AND FERGUS. MANY OF THE JOBS ARE OF SHORT DURATION. THERE IS NO WAY TO LOGICALLY DIVIDE THE RESPONDENT'S WORK SO THAT SOME EMPLOYEES WORK ONLY IN WELLINGTON COUNTY AND SOME IN WATERLOO COUNTY FOR EXAMPLE."

9. IN PARAGRAPH 14(2) OF ITS REPLY THE RESPONDENT HAS CONSENTED TO THE APPLICATION BEING DISPOSED OF BY THE BOARD WITHOUT A HEARING BY THE BOARD AND HAS MADE THE FOLLOWING REPRESENTATIONS THEREON:

"THE APPLICATION IS MADE APPARENTLY FOR 6 EMPLOYEES OF THE RESPONDENT WHO HAPPENED TO BE WORKING IN THE COUNTY OF WELLINGTON ON JULY 12TH, 1972. IN VIEW OF THE INTERCHANGEABILITY OF THE OPERATORS BETWEEN COUNTIES AND IN PARTICULAR BETWEEN THE COUNTIES OF WATERLOO AND WELLINGTON IT IS SUBMITTED THAT THE APPROPRIATE UNIT OF THE EMPLOYEES FOR CERTIFICATION PURPOSES WOULD INCLUDE AT LEAST THOSE EMPLOYEES IN WATERLOO AND WELLINGTON COUNTIES."

10. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES AND FINDS NO REASON TO DEPART FROM ITS PRACTICE OF FINDING THAT THE UNIT PROPOSED BY THE APPLICANT WITH REFERENCE SOLELY TO THE COUNTY OF WELLINGTON (WHICH IS REGULAR BOARD GEOGRAPHIC AREA #7) IS A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING. THE FACT THAT THE RESPONDENT OPERATES IN THREE SEPARATE GEOGRAPHIC AREAS AT THE SAME TIME (THE COUNTY OF WATERLOO IS REGULAR BOARD GEOGRAPHIC AREA #6 AND THE COUNTY OF BRANT TOGETHER WITH THE COUNTY OF NORFOLK CONSTITUTE REGULAR BOARD GEOGRAPHIC AREA #4) HAS NOT BEEN HELD BY THE BOARD TO JUSTIFY, IN ITSELF, COMBINING TWO OR MORE REGULAR GEOGRAPHIC AREAS WHEN DEFINING AN APPROPRIATE BARGAINING UNIT. THE POSITION OF THE RESPONDENT IN OPERATING IN MORE THAN ONE COUNTY AND IN

MORE THAN ONE BOARD GEOGRAPHIC AREA AT THE SAME TIME IS BY NO MEANS UNCOMMON FOR EMPLOYERS OPERATING BUSINESSES IN THE CONSTRUCTION INDUSTRY.

11. HAVING REGARD TO THE FOREGOING THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WELLINGTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

12. THE LIST FOR THE PURPOSES OF THE COUNT ACCORDINGLY CONSISTS OF THE SIX PERSONS WHOSE NAMES APPEAR ON THE SCHEDULE A FILED WITH RESPECT TO THE COUNTY OF WELLINGTON. FIVE OF THE SIX NAMES WHICH APPEAR ON THE FOUR STATEMENTS OF MEMBERSHIP DOCUMENTS AND THE TWO COMBINATION APPLICATIONS FOR MEMBERSHIP ACCOMPANIED BY RECEIPTS FILED BY THE APPLICANT CORRESPOND TO NAMES APPEARING ON THE SCHEDULE A FILED WITH RESPECT TO THE COUNTY OF WELLINGTON.

13. THERE WAS ALSO FILED IN THIS MATTER A STATEMENT OF DESIRE IN OPPOSITION TO THIS APPLICATION FOR CERTIFICATION SIGNED BY TWENTY-FOUR PERSONS. THE NAMES OF EIGHTEEN OF THE PERSONS WHO SIGNED THE STATEMENT OF DESIRE IN OPPOSITION ALSO APPEAR ON THE VARIOUS SCHEDULES FILED BY THE RESPONDENT WITH RESPECT TO THE COUNTIES OF WELLINGTON, WATERLOO AND BRANT. HOWEVER, ONLY ONE OF THE PERSONS WHOSE NAME APPEARS ON THE SCHEDULE A FILED WITH RESPECT TO THE COUNTY OF WELLINGTON HAS ALSO SIGNED THE STATEMENT OF DESIRE IN OPPOSITION TO THIS APPLICATION. THIS STATEMENT OF DESIRE IN OPPOSITION TO THIS APPLICATION FOR CERTIFICATION BEARS THE FOLLOWING HEADING:

"WE THE UNDERSIGNED OPERATING EMPLOYEES OF WAYNCO LIMITED HAVE BEEN GIVEN NOTICE THAT ON JULY 12TH, 1972, LOCAL 793 OF OPERATING ENGINEERS HAVE MADE APPLICATION FOR CERTIFICATION AS BARGAINING AGENT FOR WAYNCO IN WELLINGTON COUNTY.

WE WISH TO STATE THAT WE ARE PERIODICALLY EMPLOYED BY WAYNCO IN WELLINGTON COUNTY AND WE DO NOT WANT TO BE REPRESENTED BY LOCAL 793 OF THE OPERATING ENGINEERS."

14. AS STATED EARLIER, ONLY THE NAME OF ONE OF THE PERSONS WHO SIGNED THIS STATEMENT OF DESIRE IN OPPOSITION TO THIS APPLICATION FOR CERTIFICATION ALSO APPEARS ON THE SCHEDULE A FILED BY THE RESPONDENT WITH RESPECT TO THE COUNTY OF WELLINGTON. IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT, IT IS THE PRACTICE OF THE BOARD TO INCLUDE FOR THE PURPOSES OF THE COUNT ONLY THOSE PERSONS AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION. THIS PRACTICE REFLECTS THE FLUCTUATION IN THE NAMES

AND NUMBER OF EMPLOYEES EMPLOYED ON CONSTRUCTION INDUSTRY SITES FROM DAY TO DAY. IN ADDITION, IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT, THE BOARD NEED NOT HAVE REGARD TO ANY INCREASE IN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AFTER THE APPLICATION WAS MADE. REFERENCE IS MADE TO SECTION 108(2) OF THE LABOUR RELATIONS ACT. THEREFORE, ON THE BASIS OF ALL THE EVIDENCE BEFORE THE BOARD, IT IS NOT NECESSARY FOR THE BOARD TO INQUIRE INTO THE STATEMENT OF DESIRE FILED IN THIS MATTER BECAUSE THE APPLICANT STILL HAS SUFFICIENT UN-CHALLENGED EVIDENCE OF MEMBERSHIP TO ENTITLE IT TO OUTRIGHT CERTIFICATION WITHOUT THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

15. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 20TH, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION ON THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME BY THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

16. IN THE RESULT A CERTIFICATE WILL ISSUE TO THE APPLICANT.

2165-72-R: MRS. IRENE CALVERLEY (APPLICANT) V. INTERNATIONAL UNION AUTO WORKERS LOCAL 1297 (RESPONDENT) V. NORTH AMERICAN ROCKWELL OF CANADA LTD. (FORMERLY CANADIAN MOTOR LAMP SUBSIDIARY OF NORTH AMERICAN ROCKWELL CORP.) (INTERVENER).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

APPEARANCES AT THE HEARING: I. CALVERLEY FOR THE APPLICANT; W. CORNWALL AND D. KEAN FOR THE RESPONDENT; H. W. GREEN AND C. W. ORR FOR THE INTERVENER.

DECISION OF THE BOARD: JULY 27, 1972.

1. THIS IS AN APPLICATION FILED UNDER SECTION 49 OF THE LABOUR RELATIONS ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT.

2. THE COLLECTIVE AGREEMENT WHICH COVERS THE EMPLOYEES AFFECTED BY THIS APPLICATION WAS EFFECTIVE FROM AUGUST 16, 1969 UNTIL AUGUST 15, 1972. THIS APPLICATION WAS FILED ON JUNE 16, 1972. PURSUANT TO THE PROVISIONS OF SECTION 49(2)(A) OF THE LABOUR RELATIONS ACT, SUCH AN APPLICATION MAY BE MADE ONLY AFTER THE COMMENCEMENT OF THE LAST TWO MONTHS OF THE OPERATION OF THE COLLECTIVE AGREEMENT. HAVING REGARD TO THE REASONS CONTAINED IN THE DOMINION BUILDING MATERIALS LIMITED CASE, OLRB M.R. JUNE 1965, P. 237 AND IN THE BRANTFORD GENERAL

HOSPITAL CASE, OLRB M.R. NOVEMBER 1968, P. 840, THE BOARD FINDS THAT THE INSTANT APPLICATION IS TIMELY.

3. THREE STATEMENTS OF DESIRE WERE FILED IN SUPPORT OF THIS APPLICATION AND CONTAINED A TOTAL OF SEVEN SIGNATURES. HOWEVER, ONE OF THE SIGNATURES APPEARED ON TWO DOCUMENTS. ON TWO OF THE STATEMENTS OF DESIRE WHICH CONTAINED A TOTAL OF THREE SIGNATURES, THE HEADING ON THE DOCUMENT LEAVES NO DOUBT WHATSOEVER THAT THE PERSONS WHO SIGNED THE DOCUMENT DESIRED TO HAVE THE BARGAINING RIGHTS OF THE RESPONDENT TERMINATED. HOWEVER, WITH RESPECT TO THE THIRD STATEMENT OF DESIRE FILED IN SUPPORT OF THIS APPLICATION AND WHICH CONTAINED FOUR SIGNATURES, THERE WERE TYPOGRAPHICAL ERRORS MADE WITH RESPECT TO THE LOCAL UNION AFFECTED BY THIS APPLICATION. IN OUR VIEW, HAVING REGARD TO THE WORDING ON THIS LAST MENTIONED STATEMENT OF DESIRE AND TO THE EVIDENCE BEFORE THE BOARD, WE HAVE NO HESITATION IN ACCEPTING THE LAST MENTIONED STATEMENT OF DESIRE AS ACCURATELY REFLECTING THE WISHES OF THE FOUR SIGNATORIES THERETO TO HAVE THE BARGAINING RIGHTS OF THE RESPONDENT TERMINATED. EVEN IF THE BOARD WERE TO ASSUME, FOR THE PURPOSES OF THE ARGUMENT, THAT THE THREE SIGNATORIES ON THIS DOCUMENT, APART FROM THE SIGNATURE OF THE APPLICANT, DID NOT WISH TO HAVE THE BARGAINING RIGHTS OF THE RESPONDENT TERMINATED, IT IS NEVERTHELESS QUITE CLEAR THAT WHEN THE SIGNATURE OF THE APPLICANT AND THE THREE SIGNATURES ON THE FIRST TWO MENTIONED STATEMENTS OF DESIRE ARE TAKEN INTO ACCOUNT, THERE CAN BE NO DISPUTE THAT AT LEAST FOUR OF THE SEVEN EMPLOYEES AFFECTED BY THIS APPLICATION QUITE CLEARLY DESIRED TO HAVE THE BARGAINING RIGHTS OF THE RESPONDENT TERMINATED.

4. THE BOARD IS THEREFORE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF NORTH AMERICAN ROCKWELL OF CANADA LTD. (FORMERLY CANADIAN MOTOR LAMP SUBSIDIARY OF NORTH AMERICAN ROCKWELL CORP.) IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION ON JULY 5, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 49(3) OF THE SAID ACT.

5. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF NORTH AMERICAN ROCKWELL OF CANADA LTD. (FORMERLY CANADIAN MOTOR LAMP SUBSIDIARY OF NORTH AMERICAN ROCKWELL CORP.). THOSE ELIGIBLE TO VOTE ARE ALL OFFICE AND CLERICAL EMPLOYEES OF AMERICAN ROCKWELL OF CANADA LTD. (FORMERLY CANADIAN MOTOR LAMP SUBSIDIARY OF NORTH AMERICAN ROCKWELL CORP.) AT OTTER LAKE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SECRETARY TO THE PLANT MANAGER, SECRETARY TO THE CONTROLLER, GENERAL ACCOUNTANT, COST AND BUDGET ANALYST, EMPLOYEES OF THE PERSONNEL DEPARTMENT, PLANT ENGINEER, FIRST AID ATTENDANTS ON THE DATE HEREOF WHO DO NOT VOLUN-

TARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

6. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE RESPONDENT IN THEIR EMPLOYMENT RELATIONS WITH NORTH AMERICAN ROCKWELL OF CANADA LTD. (FORMERLY CANADIAN MOTOR LAMP SUBSIDIARY OF NORTH AMERICAN ROCKWELL CORP.).

7. THE MATTER IS REFERRED TO THE REGISTRAR.

2143-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE NORTH SHORE BOARD OF EDUCATION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: W. A. ACTON AND C. S. DUNGEY FOR THE APPLICANT; LLOYD J. VALIN AND BERT CAMPBELL FOR THE RESPONDENT; HELEN M. COMISKY FOR THE OBJECTORS.

DECISION OF THE BOARD: JULY 20, 1972.

1. THE NAME "NORTH SHORE BOARD OF EDUCATION" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "THE NORTH SHORE BOARD OF EDUCATION".

2. IN ITS APPLICATION FOR CERTIFICATION FILED BEFORE THE BOARD ON JUNE 16, 1972, THE APPLICANT PROPOSED A BARGAINING UNIT AS FOLLOWS:

"ALL EMPLOYEES OF THE RESPONDENT AT ELLIOT LAKE, BLIND RIVER AND IRON BRIDGE, ONTARIO, SAVE AND EXCEPT FOR DIRECTOR OF EDUCATION, SUPERINTENDENT OF EDUCATION, SUPERINTENDENT OF BUSINESS ADMINISTRATION, ASSISTANT BUSINESS ADMINISTRATOR, TEACHING STAFF, SCHOOL INSPECTORS, CARETAKING STAFF AND MAINTENANCE STAFF."

3. HOWEVER, AT THE INITIAL HEARING OF THIS MATTER ON JULY 14, 1972, THE APPLICANT SOUGHT LEAVE OF THE BOARD TO AMEND ITS BARGAINING UNIT AS INITIALLY PROPOSED. UPON HEARING THE REPRESENTATIONS OF THE PARTIES IN THIS REGARD, THE BOARD ACCEDED TO THIS REQUEST, SUCH THAT THE BARGAINING UNIT AS PROPOSED BY THE APPLICANT WAS AMENDED TO READ AS FOLLOWS:

"ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN THE NORTH SHORE BOARD OF EDUCATION DISTRICT, SAVE AND EXCEPT ADMINISTRATIVE OFFICER AND PERSONS ABOVE THE RANK OF ADMINISTRATIVE OFFICER."

4. SERVICE OF THE FORM 5 NOTICE TO EMPLOYEES OF THIS APPLICATION WAS EFFECTED BY WAY OF POSTING ON THE NINE BULLETIN BOARDS LOCATED AT THE VARIOUS BUILDINGS OCCUPIED BY THE RESPONDENT AT ELLIOT LAKE, BLIND RIVER AND IRON BRIDGE. COUNSEL FOR THE RESPONDENT, HOWEVER, ADVISED THE BOARD THAT THE PROPOSED BARGAINING UNIT AS AMENDED WOULD ALSO AFFECT EMPLOYEES EMPLOYED BY THE RESPONDENT AT ITS SCHOOLS IN ALGOMA MILLS, SERPENT RIVER AND SPANISH. A REVIEW OF THE FILE IN THIS REGARD DISCLOSES THAT NOTICE OF THIS APPLICATION HAS NOT BEEN POSTED IN THESE LATTER THREE LOCATIONS.

5. HAVING REGARD TO THESE CIRCUMSTANCES, THE BOARD ACCORDINGLY ADVISED THE PARTIES THAT IT WOULD BE NECESSARY TO SET A NEW TERMINAL DATE IN THESE PROCEEDINGS, THE SPECIFIC DATE OF WHICH WOULD BE DETERMINED UPON RECEIPT FROM THE RESPONDENT OF A REVISED LIST OF EMPLOYEES COMPRISING THE APPLICANT'S PROPOSED BARGAINING UNIT AS AMENDED AT THE INITIAL HEARING OF THIS MATTER.

6. THE RESPONDENT FURTHER ADVISED THE BOARD, AT THE INITIAL HEARING OF THIS MATTER, THAT NO WORK HAS BEEN SCHEDULED FOR MOST OF THE EMPLOYEES AFFECTED BY THIS APPLICATION DURING THE SCHOOL VACATION PERIOD. IN VIEW OF THE FACT THAT THESE EMPLOYEES WOULD NOT BE IN ATTENDANCE AT THEIR RESPECTIVE WORK LOCATIONS IN THE VARIOUS BUILDINGS OCCUPIED BY THE RESPONDENT, THE BOARD INDICATED THAT, IN AN EFFORT TO PREVENT FURTHER DELAY IN THESE PROCEEDINGS, IT WOULD BE PREPARED TO EFFECT SERVICE OF NOTICE OF THIS APPLICATION AS AMENDED UPON THE EMPLOYEES WHO MAY BE AFFECTED, BY WAY OF REGISTERED MAIL. COUNSEL FOR THE RESPONDENT UNDERTOOK TO SUPPLY THE BOARD WITH REVISED LISTS OF EMPLOYEES INDICATING THE NAMES AND ADDRESSES OF THE EMPLOYEES WHICH WOULD BE INCLUDED IN THE PROPOSED BARGAINING UNIT OF THE APPLICANT AS AMENDED.

7. PURSUANT TO CORRESPONDENCE FROM THE RESPONDENT DATED JULY 18, 1972, THE BOARD IS NOW IN RECEIPT OF THE AFORESAID REVISED LIST OF EMPLOYEES TOGETHER WITH ADDRESSES.

8. THE REGISTRAR, IN THESE CIRCUMSTANCES, IS ACCORDINGLY DIRECTED TO EXTEND THE TERMINAL DATE IN THIS MATTER TO TUESDAY, AUGUST 1ST, 1972.

9. THE REGISTRAR IS FURTHER DIRECTED TO SERVE BY REGISTERED MAIL, NOTICE OF THIS APPLICATION FOR CERTIFICATION AS AMENDED UPON THE EMPLOYEES AS SET OUT IN THE REVISED LIST FILED BY THE RESPONDENT HEREIN.

1445-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. PATCHOQUE PLYMOUTH HAWKESBURY MILLS, A DIVISION OF AMOCO CANADA PETROLEUM COMPANY LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: JEFFREY SACK, J. C. HORAN AND P. J. DUPONT

FOR THE APPLICANT; F. R. VON VEH, T. W. WILLIAMS, D. ATKINS, M. MENARD, B. PEARSON, T. C. H. BALDWIN AND J. C. DAVIS FOR THE RESPONDENT; ROBIN B. CUMINE FOR THE GROUP OF EMPLOYEES.

DECISION OF VICE-CHAIRMAN R. A. FURNESS AND BOARD MEMBER E. BOYER:
JULY 28, 1972.

1. DURING THE COURSE OF HEARING EVIDENCE CONCERNING ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT FILED BY THE RESPONDENT AND BY A GROUP OF EMPLOYEES, IT BECAME APPARENT THAT THERE WERE CERTAIN IMPROPRIETIES WITH RESPECT TO AT LEAST ONE OF THE APPLICATIONS FOR MEMBERSHIP FILED BY THE APPLICANT. MORE PARTICULARLY, IT CAME TO THE ATTENTION OF THE BOARD THAT THE PERSON INDICATED ON A MEMBERSHIP CARD FILED BY THE APPLICANT AS THE COLLECTOR OF THE ONE DOLLAR PAID BY THE PERSON FOR MEMBERSHIP HAD NOT, IN FACT, COLLECTED THE MONEY PAYMENT, BUT THAT THE DOLLAR HAD BEEN COLLECTED BY SOMEONE ELSE. THERE WAS NO DISCLOSURE OF THIS FACT ON THE FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, FILED BY THE APPLICANT.

2. WHEN THIS FACT BECAME APPARENT TO THE BOARD AT THE CLOSE OF THE FIFTH DAY OF HEARING EVIDENCE CONCERNING THE ABOVE REFERRED TO ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT, THE BOARD INVITED THE PARTIES TO MAKE THEIR REPRESENTATIONS TO THE BOARD IN CONNECTION WITH THIS IMPROPRIETY REVEALED TO THE BOARD AND TO THE PARTIES.

3. IN A LETTER TO THE BOARD, THE APPLICANT ACKNOWLEDGED THAT THE PERSON WHO WAS SHOWN ON THE APPLICATION FOR MEMBERSHIP IN QUESTION AS THE COLLECTOR DID NOT, IN FACT, COLLECT THE DOLLAR SHOWN AS PAYMENT THEREON AND THAT THIS SAME PERSON HAD COMMITTED A SIMILAR PRACTICE OF SIGNING APPLICATIONS FOR MEMBERSHIP CARDS AS A COLLECTOR OF THE ONE DOLLAR WHEN, IN FACT, HE HAD NOT ACTUALLY COLLECTED THE DOLLAR ON ANOTHER OCCASION.

4. IN THE LIGHT OF THESE FACTS, THE APPLICANT REQUESTED LEAVE OF THE BOARD TO WITHDRAW THIS APPLICATION FOR CERTIFICATION. THE RESPONDENT AND THE GROUP OF EMPLOYEES AGREED WITH THE APPLICANT THAT HAVING REGARD TO THE STAGE AT WHICH THIS REQUEST WAS MADE, THE BOARD, FOLLOWING ITS USUAL PRACTICE, OUGHT TO DISMISS THE APPLICATION.

5. THE PARTIES, HOWEVER, DIFFERED ON THE QUESTION OF WHETHER IN ALL OF THE CIRCUMSTANCES THE BOARD OUGHT TO EXERCISE ITS DISCRETION UNDER THE PROVISIONS OF SECTION 92(2)(1) OF THE LABOUR RELATIONS ACT AND BAR THE APPLICANT FROM MAKING A FURTHER APPLICATION FOR CERTIFICATION FOR A PERIOD OF TEN MONTHS. IT WAS THE POSITION OF THE RESPONDENT AND THE GROUP OF EMPLOYEES THAT IN ALL OF THE CIRCUMSTANCES, THE BOARD OUGHT TO EXERCISE ITS DISCRETION AND BAR THE APPLICANT FROM MAKING A NEW APPLICATION FOR CERTIFICATION WITH RESPECT TO EMPLOYEES AFFECTED BY THIS APPLICATION FOR A PERIOD OF TEN MONTHS. THE APPLICANT, HOWEVER, DISAGREED WITH THE POSITION OF THE RESPONDENT AND THE GROUP OF EMPLOYEES AND ARGUED THAT IN ALL OF THE CIRCUMSTANCES, THE BOARD

UGHT NOT TO IMPOSE A BAR ON THE APPLICANT AND SO NOT PREVENT THE APPLICANT FROM MAKING A FURTHER APPLICATION FOR CERTIFICATION IF THE APPLICANT SO CHOSE TO DO. IT WAS CONCEDED BY THE APPLICANT AND IT WAS COMMON KNOWLEDGE OF THE RESPONDENT AND THE GROUP OF EMPLOYEES THAT THE APPLICANT WAS IN THE PROCESS OF CONDUCTING A NEW ORGANIZATIONAL CAMPAIGN IN WHICH THE APPLICANT WAS ENDEAVOURING TO HAVE THE EMPLOYEES OF THE RESPONDENT AFFECTED BY THIS APPLICATION SIGN NEW APPLICATIONS FOR MEMBERSHIP CARDS IN THE APPLICANT.

6. THE BOARD HAS ON PREVIOUS OCCASIONS IMPOSED A BAR OF SIX MONTHS' DURATION ON AN UNSUCCESSFUL APPLICATION FOR CERTIFICATION BY A TRADE UNION. THE EFFECT OF THIS BAR IS THAT THE BOARD WILL NOT ENTERTAIN A FURTHER APPLICATION FOR CERTIFICATION WITH RESPECT TO ANY OF THE EMPLOYEES OF A RESPONDENT AFFECTED BY THE UNSUCCESSFUL APPLICATION FOR CERTIFICATION FOR THE STATED PERIOD OF SIX MONTHS.

7. IN ALMOST EVERY INSTANCE WHERE THE BOARD HAS IMPOSED SUCH A BAR, A REPRESENTATION VOTE HAS BEEN DIRECTED AND CONDUCTED EVEN THOUGH THE BALLOTS MAY NOT HAVE BEEN COUNTED, SEE, FOR EXAMPLE, THE STANLEY STEEL COMPANY LIMITED CASE, OLRB REP. FEBRUARY 1972, P. 181. WHERE THE BOARD HAS DIRECTED A REPRESENTATION VOTE AND A TRADE UNION REQUESTS LEAVE TO WITHDRAW ITS APPLICATION FOR CERTIFICATION BEFORE THE REPRESENTATION VOTE IS CONDUCTED, THE BOARD HAS IN THE PAST DISMISSED THE APPLICATION FOR CERTIFICATION AND HAS NOT IMPOSED A BAR TO FURTHER APPLICATIONS BUT HAS DRAWN THE ATTENTION OF THE PARTIES TO THE PRINCIPLE ENUNCIATED IN THE MATHIAS-QUELLETTE CASE, 56 CLLC ¶18,026; C.L.S. 76-485. THIS PRINCIPLE PLACES THE BURDEN ON THE APPLICANT OF SHOWING WHY THE BOARD SHOULD ENTERTAIN A SUBSEQUENT APPLICATION FOR CERTIFICATION BY THE SAME TRADE UNION WITH RESPECT TO ANY OF THE EMPLOYEES AFFECTED BY THE EARLIER UNSUCCESSFUL APPLICATION FOR CERTIFICATION. A THIRD EXAMPLE OF THE TYPE OF SITUATION WHERE THE BOARD HAS IMPOSED A BAR IS TO BE FOUND IN THE J. W. CROOKS COMPANY CASE, OLRB REP. FEBRUARY 1972, P. 126, WHERE A TRADE UNION MADE FOUR UNSUCCESSFUL APPLICATIONS FOR THE SAME UNIT OF EMPLOYEES IN A PERIOD OF A LITTLE MORE THAN THREE MONTHS.

8. THE FACTUAL SITUATIONS OUTLINED IN PARAGRAPH SEVEN HEREIN ARE OUT PRESENT IN THE INSTANT APPLICATION. THE RESPONDENT AND THE GROUP OF EMPLOYEES ARGUED THAT BECAUSE OF THE LENGTH OF THE HEARINGS BEFORE THE BOARD, THE NATURE OF THE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT MADE BY THE RESPONDENT AND THE GROUP OF EMPLOYEES AGAINST THE APPLICANT, THE EXPENSE OF THE HEARINGS, THE NEW ORGANIZATIONAL CAMPAIGN OF THE APPLICANT, THE EVIDENCE BEFORE THE BOARD AND THE CIRCUMSTANCES SURROUNDING THE APPLICANT'S REQUEST TO WITHDRAW THIS APPLICATION; THE BOARD OUGHT, IN ALL THE CIRCUMSTANCES OF THIS APPLICATION, TO EXERCISE ITS DISCRETION AND IMPOSE A BAR OF TEN MONTHS' DURATION ON THE APPLICANT.

9. THE EVIDENCE RESPECTING THE ALLEGATIONS OF IMPROPER OR

IRREGULAR CONDUCT WAS NOT COMPLETED BEFORE THE BOARD. IT WAS AGREED BY ALL THE PARTIES, AND WE SO FIND, THAT THERE WERE IMPROPRIETIES IN THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT. THIS, IN TURN, CALLS THE FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, INTO QUESTION. IN ALL OF THE CIRCUMSTANCES, THE BOARD WOULD HAVE DISMISSED THIS APPLICATION ON ITS OWN MOTION EVEN IF THE APPLICANT HAD NOT REQUESTED LEAVE TO WITHDRAW THIS APPLICATION.

10. THE BOARD IS UNABLE TO MAKE A RULING WITH RESPECT TO THE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST THE APPLICANT SINCE IT HAS NOT HEARD ALL OF THE EVIDENCE RESPECTING THESE MATTERS. HOWEVER, FOR THE PURPOSES OF ARGUMENT, AND STATING THE POSITIONS OF THE RESPONDENT AND THE GROUP OF EMPLOYEES AT THEIR STRONGEST, WE SHALL ASSUME THAT THE ALLEGATIONS OF THE RESPONDENT AND THE GROUP OF EMPLOYEES AGAINST THE APPLICANT HAVE BEEN ESTABLISHED BEFORE THE BOARD, THIS WOULD HAVE LED EITHER TO THE DISMISSAL OF THIS APPLICATION WITHOUT A BAR, OR, POSSIBLY, TO THE DIRECTION OF A REPRESENTATION VOTE BY THE BOARD.

11. IN OUR VIEW, THE BOARD OUGHT NOT, IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 92(2)(1) OF THE LABOUR RELATIONS ACT, TO IMPOSE A BAR IN THE CIRCUMSTANCES OF THIS APPLICATION WHERE SUCH BAR WOULD IN EFFECT SERVE SOLELY AS A PUNITIVE MEASURE AGAINST THE APPLICANT. REFERENCE IS MADE TO THE WATSON MANUFACTURING COMPANY OF PARIS LIMITED CASE, OLRB REP. AUGUST 1968, P. 441.

12. THIS APPLICATION IS DISMISSED.

13. ON THE FACTS OF THIS APPLICATION AND HAVING REGARD TO THE REPRESENTATIONS OF ALL OF THE PARTIES, A BAR WILL NOT BE IMPOSED UPON THE APPLICANT UNDER THE PROVISIONS OF SECTION 92(2)(1) OF THE LABOUR RELATIONS ACT.

DECISION OF BOARD MEMBER F. W. MURRAY: JULY 28, 1972.

1. I DISSENT.

2. MY NOTES SHOW THAT THE FIRST WITNESS CALLED BY THE APPLICANT IN DEFENCE OF THE CHARGES FILED BY THE RESPONDENT AND THE GROUP OF EMPLOYEES OF IMPROPER CONDUCT DURING THE ORGANIZING CAMPAIGN, STATED THAT HE SIGNED AN APPLICATION FOR MEMBERSHIP AND PAID THE SUM OF \$1.00 IN THE HOUSE OF, AND IN THE PRESENCE OF, ONE RENE VERNIER. THIS WITNESS ALSO STATED THAT HIS BROTHER-IN-LAW ALSO PAID THE SUM OF \$1.00 AND SIGNED AN APPLICATION FOR MEMBERSHIP.

3. AT THIS POINT IN THE TESTIMONY THE RESPONDENT REQUESTED THE WITHDRAWAL OF WITNESSES FROM THE HEARING ROOM AND REQUESTED THE BOARD TO EXAMINE THE EVIDENCE OF MEMBERSHIP OF THE WITNESS, GERRARD SEQUIN. THE BOARD DID SO, AND FOUND THAT THE EVIDENCE OF

MEMBERSHIP SUBMITTED BY THE APPLICANT, NAMELY THE APPLICATION CARD SIGNED BY SEQUIN, HAD BEEN WITNESSED BY ONE GILBERT LAROCQUE, AND THAT THE RECEIPT PORTION SHOWED THAT LAROCQUE HAD SIGNED AS HAVING RECEIVED THE MONEY FROM SEQUIN. (ON LATER EXAMINATION OF THE EVIDENCE, THE BOARD FOUND THAT GILBERT LAROCQUE HAD SIGNED A SUBSTANTIAL PROPORTION OF THE EVIDENCE OF MEMBERSHIP AND RECEIPTS FILED BY THE APPLICANT IN SUPPORT OF ITS APPLICATION).

4. AS IS OUTLINED IN PARAGRAPH TWO OF THE MAJORITY DECISION, THE BOARD, HAVING INVITED THE PARTIES TO MAKE THEIR REPRESENTATIONS TO THE BOARD IN CONNECTION WITH THE EVIDENCE WHICH HAD JUST BEEN PRESENTED TO THE BOARD, ADJOURNED THE HEARING. THE BOARD DID NOT, AS IT DID IN THE NATIONAL STEEL CASE, INFRA, CONDUCT FURTHER INQUIRIES BY WAY OF CALLING WITNESSES, NOT ONLY DEALING WITH SUCH MATTERS AS THE ACQUISITION OF THE EVIDENCE, BUT WITH RESPECT TO THE ENQUIRIES MADE IN THE COMPLETION OF FORM 8.

5. THE SUBSEQUENT LETTER TO THE BOARD FROM THE APPLICANT AS REFERRED TO IN PARAGRAPH THREE OF THE MAJORITY DECISION DID NOT IN FACT CLARIFY THE WHOLE SITUATION, WHEREIN THE APPLICANT ACKNOWLEDGED THAT GILBERT LAROCQUE HAD COMMITTED A SIMILAR PRACTICE ON ANOTHER OCCASION. THE BOARD IS NOT AWARE AS TO WHETHER OR NOT THE APPLICANT WAS REFERRING TO A THIRD AND UNNAMED PERSON OR THE BROTHER-IN-LAW OF THE WITNESS SEQUIN.

6. THERE IS NO DOUBT THAT THERE IS A CLOUD ON THE DOCUMENTARY EVIDENCE SUBMITTED IN THIS APPLICATION. AS HAS BEEN STATED IN PARAGRAPH NINE OF THE MAJORITY DECISION, FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, IS IN QUESTION. THE APPLICANT HAD NEITHER MADE AN EFFORT TO PRESENT EVIDENCE TO THE BOARD CONCERNING THIS MATTER, NOR HAS MADE ANY ATTEMPT TO CLARIFY ITS POSITION CONCERNING FORM 8. THE BOARD HAS RELIED ON THE ACCURATE COMPLETION OF THIS FORM (SEE NATIONAL STEEL CAR, CCH LABOUR LAW CASES, VOLUME 3, 1964-1966, P. 16090). IF THE REQUEST TO WITHDRAW THIS APPLICATION HAD NOT BEEN MADE, THERE IS NO DOUBT THAT THE BOARD WOULD HAVE, AT LEAST, DISMISSED THE APPLICATION, AND IF WE ARE TO BE CONSISTENT WITH THE PROCEDURES AS FOLLOVED IN THE NATIONAL STEEL CAR CASE, SUPRA, THE BOARD, PRIOR TO MAKING ANY DECISION ON THIS MATTER WOULD HAVE CONDUCTED ITS OWN ENQUIRY INTO THE CIRCUMSTANCES SURROUNDING THE COMPLETION OF FORM 8, AND PARTICULARLY CONCERNING THE ENQUIRIES MADE BY THE PERSONS COMPLETING THE FORM AS TO THE ACQUISITION OF THE SIGNATURES AND THE PAYMENT OF FUNDS TO THOSE PERSONS SHOWN ON THE MEMBERSHIP EVIDENCE AS COLLECTORS.

7. IT WOULD SEEM TO ME THAT THE MATHIAS QUELLETTE CASE. 56 CLLC, P. 18026, STANDS, INTER ALIA, FOR A SHIFT IN ONUS. THAT IS TO SAY, THE APPLICANT MUST STATE WHY THEY SEEK TO WITHDRAW THE APPLICATION, AND IF IT IS ADMITTED THAT THE APPLICANT ANTICIPATES DEFEAT IN THE REPRESENTATION VOTE THAT THE BOARD WILL DISMISS THE APPLICATION AND IMPOSE A BAR.

8. SINCE THE MATHIAS OUELLETTE DECISION, SUPRA, AND BEFORE THE BOARD INTRODUCED FORM 8 (FORMERLY FORM 9) AS A STATEMENT REQUIRED TO SUBSTANTIATE MEMBERSHIP EVIDENCE, THERE WAS THE IBEW AND HYDRO ELECTRIC POWER COMMISSION OF HAMILTON CASE, CCH CANADIAN LABOUR LAW CASES, VOLUME 1, 1944-1959, P. 18,120, WHEREIN THE BOARD TOOK A MORE SERIOUS VIEW OF A WITHDRAWAL IN THE FACT OF A DISMISSAL BECAUSE OF THE DISCOVERY OF IMPROPRIETIES IN THE EVIDENCE OF MEMBERSHIP FILED BY AN APPLICANT TRADE UNION. IN THIS CASE THE BOARD, UNDER THE CHAIRMANSHIP OF J. FINKLEMAN, SAID AT THE CONCLUSION OF THE DECISION ON THE FIRST APPLICATION:

"SHOULD THERE BE ANOTHER APPLICATION FOR CERTIFICATION COVERING THE EMPLOYEES AFFECTED BY THIS APPLICATION, THE BOARD WILL, AT THAT TIME, ENTERTAIN ANY REPRESENTATION THE PARTIES MAY WISH TO MAKE WITH REGARD TO THE TIMELINESS OF THAT APPLICATION."

9. IN THIS CASE, WHEN THE APPLICANT MADE A SECOND APPLICATION FOR CERTIFICATION, THE BOARD FOUND THAT:

"IN VIEW OF THE CIRCUMSTANCES IN WHICH THE REQUEST FOR WITHDRAWAL IN THE EARLIER CASE WAS MADE, THERE IS A CLOUD ON THE DOCUMENTARY EVIDENCE IN THE CASE WHICH CAN ONLY BE REMOVED BY A REPRESENTATION VOTE, ASSUMING OF COURSE THAT THE UNION HAS THE REQUISITE SUPPORT TO THAT END."

10. IT IS THEREFORE QUITE CLEAR THAT THE BOARD'S POLICY, UP TO THE TIME WHEN FORM 8 (FORMERLY FORM 9) WAS INTRODUCED, I.E. APPROXIMATELY 1960, SHIFTED THE ONUS SO THAT THE APPLICANT MUST CLARIFY AND DISCLOSE ITS IRREGULARITIES IN A FIRST APPLICATION, (AND PRESUMABLY INTRODUCE EVIDENCE OF MITIGATING CIRCUMSTANCES), AND FAILURE TO DO SO WILL IMPERIL ANY SECOND APPLICATION, AT LEAST TO THE EXTENT THAT THE BOARD WOULD FIND A REPRESENTATION VOTE NECESSARY BEFORE MAKING ANY FINDING AS TO THE TRUE WISHES OF THE EMPLOYEES IN THE BARGAINING UNIT.

11. SINCE THE INTRODUCTION OF THE USE OF FORM 8, THE BOARD HAD ADOPTED A VERY STRICT POLICY WITH RESPECT TO THE PROPER COMPLETION OF THIS FORM. REFERENCE IS MADE TO THE NATIONAL STEEL CAR CASE, SUPRA, AS PREVIOUSLY REFERRED TO AND VALLEY TRANSPORTATION CO. LTD., CASE, OLRB MONTHLY REPORTS, JUNE 1964, P. 140. MORE SPECIFICALLY, THE BOARD HAS BEEN VITALLY CONCERNED THAT PROPER INQUIRIES ARE MADE AS TO THE SIGNING UP OF APPLICATIONS FOR MEMBERSHIP CARDS AND THE PAYMENT OF MONEY DIRECT TO THE DECLARED COLLECTOR.

12. IN MY OPINION, THE BOARD SHOULD NOT PERMIT AN APPLICANT TO

VIRTUALLY CLOSE THE CASE FACED WITH ANTICIPATED DISMISSAL BECAUSE OF IMPROPRIETIES IN ITS MEMBERSHIP EVIDENCE WHICH MIGHT, IF HEARD, AMOUNT TO A FRAUD ON THE BOARD.

13. I AGREE WITH BOARD MEMBER, J. E. C. ROBINSON, Q.C., IN HIS DISSENT IN THE ED WALKER ELECTRIC LTD. CASE, BOARD FILE NO. 16804-69-R WHEREIN HE PROPOSES (PAGE 6) THAT:

"IT IS EQUALLY POSSIBLE TO EXTRACT FROM THE MATHIAS OUELLETTE DECISION A RATIO DECIDENDI WHICH IS NOT NEARLY SO CONFINING AS TO BE LIMITED TO THE SITUATION WHERE THE WITHDRAWAL IN THE FACT OF REPRESENTATION VOTE IS MOTIVATED ONLY BECAUSE THE UNION ANTICIPATED A DEFEAT IN SUCH VOTE."

14. I ALSO COMPLETELY CONCUR WITH BOARD MEMBER J. E. C. ROBINSON, Q.C. WITH HIS CONCLUSION AS EXPRESSED IN THE LAST TWO PARAGRAPHS OF HIS DISSENT IN THE WALKER ELECTRIC CASE, SUPRA:

"IN CONCLUSION, I MUST SAY THAT I FIND IT MOST ALARMING THAT THE BOARD WOULD IMPOSE A SIX MONTH BAR ON AN APPLICANT UNION WHO WITHDRAWS BECAUSE OF AN ANTICIPATED DEFEAT IN A REPRESENTATION VOTE, BUT REFUSES TO IMPOSE SUCH A BAR ON AN APPLICANT UNION WHO WITHDRAWS IN THE FACE OF AN INVESTIGATION BY THE BOARD INTO ALLEGED FRAUD.

TO ME THE LATTER IS FAR MORE SERIOUS AND EVERYTHING SHOULD BE DONE BY THIS BOARD TO RECORD ITS COMPLETE DISAPPROVAL OF ANY SUCH PRACTICE."

15. ACCORDINGLY, I WOULD HAVE DISMISSED THE APPLICATION AND WOULD FIND THAT THE BOARD SHOULD IN CASES SUCH AS THIS EXERCISE ITS DISCRETION UNDER SECTION 92(2)(1) OF THE LABOUR RELATIONS ACT AND IMPOSE A BAR OF NOT LESS THAN SIX (6) MONTHS DURATION FROM THE DATE OF THE DISMISSAL.

(INADVERTENTLY DELETED FROM THE JUNE 1972 MONTHLY REPORT).

1701-71-R: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA (APPLICANT) v. REID'S HOLDINGS (BELLEVILLE) LIMITED, UNION CARBIDE CANADA LIMITED, NAPANEE INDUSTRIES (1962) LTD., MEAD JOHNSON CANADA, A DIVISION OF BRISTOL MYERS CANADA LTD. (RESPONDENTS) v. EMPLOYEE (OBJECTOR).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: L. A. MACLEAN AND C. M. FITZGERALD FOR THE APPLICANT; W. G. PHELPS FOR THE RESPONDENT REID'S D. F. O. HERSEY AND R. F. WOLFF FOR THE RESPONDENT UNION CARBIDE; W. G. MASON FOR THE RESPONDENT NAPANEE INDUSTRIES; J. L. MCDUGALL FOR THE RESPONDENT MEAD JOHNSON; NO ONE APPEARING FOR THE OBJECTOR.

DECISION OF THE BOARD:

JUNE 22, 1972.

1. THE NAMES "REID'S HOLDINGS (BELLEVILLE) LIMITED, UNION CARBIDE CANADA LIMITED, NAPANEE INDUSTRIES LTD. AND MEAD JOHNSON CANADA LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAMES OF THE RESPONDENTS ARE AMENDED TO READ: "REID'S HOLDINGS (BELLEVILLE) LIMITED, UNION CARBIDE CANADA LIMITED, NAPANEE INDUSTRIES (1962) LTD., MEAD JOHNSON CANADA, A DIVISION OF BRISTOL MYERS CANADA LTD."

2. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT SEEKS RELIEF UNDER THE PROVISIONS OF SECTION 1 SUBSECTION (4) OF THE LABOUR RELATIONS ACT. SUBSECTION (4) READS AS FOLLOWS:

"WHERE, IN THE OPINION OF THE BOARD, ASSOCIATED OR RELATED ACTIVITIES OR BUSINESSES ARE CARRIED ON BY OR THROUGH MORE THAN ONE CORPORATION, INDIVIDUAL, FIRM, SYNDICATE OR ASSOCIATION, OR ANY COMBINATION THEREOF, UNDER COMMON CONTROL OR DIRECTION, THE BOARD, MAY TREAT THE CORPORATIONS, INDIVIDUALS, FIRMS, SYNDICATES OR ASSOCIATIONS OR ANY COMBINATION THEREOF AS CONSTITUTING ONE EMPLOYER FOR THE PURPOSES OF THIS ACT."

3. AS MAY BE OBVIOUS FROM THE FOREGOING, THERE EXISTS A PROBLEM AS TO THE IDENTITY OF THE EMPLOYER OF THE PERSONS WHOM THE APPLICANT SEEKS TO REPRESENT.

4. THE EVIDENCE AT THE HEARING INDICATED THAT A FURTHER PROBLEM, HAVING TO DO WITH THE JURISDICTION OF THE BOARD, MIGHT ARISE SHOULD THE BOARD DETERMINE THAT UNION CARBIDE CANADA LIMITED, HEREINAFTER CALLED "UNION CARBIDE", WHICH IS SAID TO MAKE PICK-UPS AND DELIVERIES INTERPROVINCIALY AND INTERNATIONALLY, IS THE EMPLOYER. IT WAS AGREED THAT THE BOARD SHOULD FIRST DETERMINE THE QUESTION AS TO WHO IS THE EMPLOYER AND LEAVE THE QUESTION OF JURISDICTION, SHOULD IT ARISE, TO BE DEALT WITH LATER. THE APPLICANT UNDERTOOK TO PRODUCE THE WITNESS McEACHERN WHOSE TESTIMONY GAVE RISE TO THE JURISDICTIONAL PROBLEM SHOULD A FURTHER HEARING BE HELD.

5. AT THE COMMENCEMENT OF THE HEARING, COUNSEL FOR THE APPLICANT WITHDREW THE APPLICATION INsofar AS MEAD JOHNSON CANADA, A DIVISION OF BRISTOL MYERS CANADA LTD. IS CONCERNED. IT SHOULD

BE OBSERVED, HOWEVER, IN VIEW OF OTHER MATTERS WHICH REMAIN TO BE DEALT WITH, THAT THERE IS A CONTRACT BETWEEN REID'S HOLDINGS (BELLEVILLE) LIMITED, HEREINAFTER CALLED "REID'S", BY WHICH THE LATTER COMPANY UNDERTAKES TO PROVIDE A TRUCK DRIVER TO MEAD JOHN-SON CANADA.

6. DURING THE HEARING, IT BECAME EVIDENT THAT NAPANEE INDUSTRIES (1962) LTD. HAS HAD AND HAS NO CONTRACT WITH REID'S. COUNSEL FOR THE APPLICANT CONSEQUENTLY ALSO WITHDREW THE APPLICATION INSOFAR AS THIS COMPANY IS CONCERNED.

7. REID'S OFFERED NO EVIDENCE BUT TOOK THE PRIMARY POSITION THAT IT WAS THE EMPLOYER OF THE PERSONS FOR WHOM THE APPLICANT SEEKS TO BE CERTIFIED AS BARGAINING AGENT. UNION CARBIDE SUPPORTED THE PRIMARY STAND TAKEN BY REID'S. BOTH COMPANIES TOOK THE SECONDARY POSITION THAT IT WAS OPEN TO THE BOARD TO FIND THAT REID'S AND UNION CARBIDE WERE THE JOINT EMPLOYERS OF THE PERSONS WITH WHOM THIS APPLICATION IS CONCERNED.

8. A CONTRACT EXISTS BETWEEN REID'S AND UNION CARBIDE, THE PREAMBLE TO WHICH READS AS FOLLOWS:

"WHEREAS UNION CARBIDE IS DESIROUS OF OBTAINING THE SERVICES OF DRIVERS EMPLOYED BY REIDS TO DRIVE VEHICLES OWNED OR LEASED BY UNION CARBIDE FOR THE CARRIAGE OF UNION CARBIDE'S GOODS AND PRODUCTS."

9. WE DO NOT BELIEVE IT TO BE NECESSARY FOR THE PURPOSES OF THE BOARD IN THIS APPLICATION TO REPRODUCE ALL OF THE 19 CLAUSES OF THE AGREEMENT. REFERENCE TO THE AGREEMENT IS THEREFORE RESTRICTED TO THOSE CLAUSES IN WHOLE OR IN PART WHICH WE BELIEVE TO BE ESSENTIAL TO THE RESOLUTION OF THE PROBLEM BEFORE THE BOARD. CLAUSE 1 STATES:

"REIDS SHALL PROVIDE UNION CARBIDE WITH COMPETENT, EXPERIENCED AND DULY LICENSED DRIVERS WHO ARE QUALIFIED UNDER ALL APPLICABLE PROVINCIAL LAWS AND REGULATIONS TO DRIVE THE VEHICLES OWNED OR LEASED BY UNION CARBIDE WITHIN THE PROVINCES OF ONTARIO AND QUEBEC AND BETWEEN POINTS IN SUCH PROVINCES."

10. CLAUSE 2 PROVIDES THAT DRIVERS SUPPLIED BY REID'S ARE TO BE SATISFACTORY IN ALL RESPECTS TO UNION CARBIDE WHICH IS TO HAVE SOLE DISCRETION TO DETERMINE DRIVER QUALIFICATIONS. DRIVERS UNSATISFACTORY TO UNION CARBIDE ARE TO BE REPLACED.

11. CLAUSE 4 READS AS FOLLOWS:

"ALL INSTRUCTIONS TO DRIVERS AS TO DISPATCHING, LOADING AND UNLOADING OF VEHICLES, ROUTING, PICKUPS, DELIVERIES AND OTHER MATTERS RELATING TO THE OPERATION OF THE VEHICLES OWNED OR LEASED BY UNION CARBIDE, SHALL BE GIVEN BY UNION CARBIDE WHICH SHALL HAVE EXCLUSIVE RESPONSIBILITY FOR GIVING SUCH INSTRUCTIONS."

12. CLAUSE 5 STATES:

"IT SHALL BE THE SOLE RESPONSIBILITY OF REIDS TO PAY THE DRIVERS' WAGES AND EMPLOYEE BENEFITS AND TO DEDUCT AND REMIT ALL APPLICABLE FEDERAL AND PROVINCIAL TAXES WITH RESPECT TO THE DRIVERS, INCLUDING BUT NOT LIMITED TO CANADA PENSION PLAN AND UNEMPLOYMENT INSURANCE."

THE EVIDENCE CLEARLY ESTABLISHES THAT THE PROVISIONS OF THE FOREGOING CLAUSE WERE CARRIED OUT BY REID'S.

13. CLAUSE 6 READS AS FOLLOWS:

"UNION CARBIDE SHALL PAY TO REIDS FOR DRIVER SERVICES PROVIDED UNDER THIS AGREEMENT, THE AMOUNT CALCULATED FOR EACH MONTH IN ACCORDANCE WITH SCHEDULE 'A' ATTACHED TO AND FORMING A PART OF THIS AGREEMENT, PLUS A SERVICE CHARGE OF OF SUCH AMOUNT ON THE FIRST OF ANNUAL PAYROLL, OR OF ANNUAL PAYROLL IN EXCESS OF SUCH SERVICE CHARGE WILL NOT APPLY TO PER DIEM ALLOWANCES (SUB-PARAGRAPH (D), SCHEDULE 'A')). THE PARTIES INTEND THAT SCHEDULE 'A' SHALL SHOW THE CURRENT WAGE RATES PAID BY REIDS TO ITS EMPLOYEES FROM TIME TO TIME, AND THAT SCHEDULE 'A' MAY BE AMENDED FROM TIME TO TIME, BY WRITTEN INSTRUMENT SIGNED BY BOTH PARTIES."

14. SCHEDULE 'A' REFERRED TO IN CLAUSE 6 SETS OUT THE RATES THAT DRIVERS PROVIDED BY REID'S ARE TO BE PAID FOR SERVICES RENDERED. WE BELIEVE THAT CLAUSE (C) OF THE SCHEDULE IS OF PARTICULAR SIGNIFICANCE. IT PROVIDES:

"NOTWITHSTANDING SUB-PARAGRAPH (B), IF UNION CARBIDE SHALL INSTRUCT A DRIVER TO RETURN TO HIS TERMINAL BY PUBLIC TRANSPORTATION, THERE SHALL BE NO CHARGE FOR HIS SERVICES FROM THE TIME THE DRIVER BOARDS SUCH TRANSPORTATION UNTIL HE IS DISPATCHED ON A NEW TRIP BY UNION CARBIDE."

THE CLAUSE IS SELF-EXPLANATORY AS TO ITS OPERATION. IT TENDS TO SUPPORT THE ARGUMENT ADVANCED BY REID'S AND UNION CARBIDE WITH RESPECT TO THEIR RELATIONSHIP SINCE IT SPEAKS OF CHARGE FOR SERVICES AND NOT OF WAGES.

15. A WORKING DOCUMENT, BEING A WEEKLY RECORD OF HOURS WORKED AND MILES DRIVEN, WAS FILED AS AN EXHIBIT. THE DOCUMENT IS HEADED "REID'S HOLDINGS (BELLVILLE) LIMITED". IN THE SPACE PROVIDED FOR "CLIENT" APPEARS THE NAME "UNION CARBIDE". THERE IS ALSO INSERTED IN THE SPACE PROVIDED THEREFORE THE NAME OF THE DRIVER CONCERNED. THERE IS A SPACE FOR SIGNATURE OF THE DRIVER.

16. THE DOCUMENT CONTAINS A CERTIFICATE OF CORRECTNESS TO BE SIGNED BY THE CUSTOMER. THE DOCUMENT FILED WAS SIGNED BY A REPRESENTATIVE OF UNION CARBIDE. THE CERTIFICATE GOES BEYOND MERE CONFIRMATION AND IT READS:

"IT IS HEREBY CERTIFIED THAT THE ABOVE HOURS AND MILES ARE CORRECT AND THAT THE WORK WAS PERFORMED IN SATISFACTORY MANNER. REID'S HOLDINGS IS NOT AN EMPLOYMENT AGENCY AND WILL NOT AT ANY TIME, ACT AS AN AGENT IN THE RECRUITING OF PERMANENT EMPLOYEES. IT IS UNDERSTOOD THAT THE UNDERSIGNED WILL NOT AUTHORIZE REID'S HOLDINGS EMPLOYEES TO OPERATE MACHINERY, AUTOMOTIVE OR TRUCK EQUIPMENT WITHOUT PRIOR WRITTEN CONSENT FROM REID'S HOLDINGS. IT IS AGREED THAT INSURANCE FURNISHED BY REID'S HOLDINGS DOES NOT COVER PHYSICAL LOSS OR DAMAGE CAUSED BY THE OPERATION OF THE UNDERSIGNED'S VEHICLES, AUTOMOBILES OR TRUCKS BY REID'S HOLDING EMPLOYEES UNLESS FIRST AGREED TO IN WRITING WITH REID'S HOLDINGS. IT IS AGREED THAT THE UNDERSIGNED SHALL ACCEPT FULL RESPONSIBILITY FOR BODILY INJURY, PROPERTY DAMAGE, FIRE, THEFT, COLLISION OR PUBLIC LIABILITY DAMAGE CLAIMS, ANY OF WHICH MAY BE CAUSED AS A RESULT OF AN ACCIDENT TAKING PLACE WHILE A REID'S HOLDINGS EMPLOYEE IS DRIVING THE UNDERSIGNED'S VEHICLE, WHETHER OWNED OR RENTED. IT IS UNDERSTOOD THAT THE UNDERSIGNED WILL NOT ENTRUST REID'S HOLDINGS EMPLOYEES WITH THE HANDLING OF CASH, NEGOTIABLES OR OTHER VALUABLES WITHOUT WRITTEN PERMISSION FROM REID'S HOLDINGS, AND THEN ONLY WHEN AN EMPLOYEE'S SPECIFIC DUTIES NECESSITATE SUCH ACTIVITY. IT IS UNDERSTOOD THAT UNDER NO CIRCUMSTANCES WILL REID'S HOLDINGS BE RESPONSIBLE FOR CLAIMS MADE UNDER REID'S HOLDINGS FIDELITY BOND UNLESS SUCH CLAIMS ARE REPORTED IN WRITING TO REID'S HOLDINGS BY THE UNDERSIGNED WITHIN 30 DAYS AFTER OCCURRENCE."

WHILE THE ABOVE TEXT IS NOT BY ANY MEANS CONCLUSIVE, IT IS OF SOME ASSISTANCE IN AN ANALYSIS OF THE RELEVANT POSITIONS OF THE TWO COMPANIES AND THE DRIVERS IN QUESTION.

17. THERE WAS ALSO FILED WITH THE BOARD AN APPLICATION FOR EMPLOYMENT WHICH BORE THE SIGNATURE OF RONALD M. MCEACHERN WHO GAVE EVIDENCE AT THE HEARING. THIS APPLICATION IS HEADED "REID'S HOLDINGS (BELLEVILLE) LIMITED". IT CONTAINS THE USUAL REQUESTS FOR INFORMATION GENERALLY FOUND IN SUCH DOCUMENTS. AT THE FOOT OF THE APPLICATION, HOWEVER, THERE APPEARS THE FOLLOWING:

"IF EMPLOYED, I AGREE AS FOLLOWS:

1. I WILL NOT ACCEPT PERMANENT EMPLOYMENT FROM ANY CUSTOMER OF REID'S FOR WHOM I HAVE WORKED UNTIL THREE MONTHS HAVE ELAPSED AFTER LAST ASSIGNMENT TO THE CUSTOMERS.
2. I AGREE THAT MY PAY STARTS WHEN I REPORT TO REID'S CUSTOMER READY FOR WORK I WILL REPORT BACK TO THE DISPATCHER, FOR FURTHER ASSIGNMENTS EACH DAY BY A.M. OF THE NEXT REGULAR WORKING DAY,
3. I AGREE THAT MY FAILURE TO REPORT BACK FOR REASSIGNMENT AS PROVIDED ABOVE WILL BE CONSIDERED A VOLUNTARY TERMINATION OF EMPLOYMENT BY ME."

AT THE SAME TIME AS THE APPLICATION FOR EMPLOYMENT WAS SIGNED, THE WITNESS COMPLETED AS APPLICATION FOR BONDING WITH RESPECT TO REID'S.

18. WAGES, IN ACCORDANCE WITH THE CONTRACT REFERRED TO PREVIOUSLY ARE PAID BY REID'S ON CHEQUE FORMS PRINTED IN THAT COMPANY'S NAME. THE EMPLOYEES CONCERNED ARE COVERED BY A GROUP INSURANCE PLAN ISSUED IN THE NAME OF REID'S COVERING EMPLOYEES AND THEIR DEPENDENTS.

19. EACH DRIVER IS ISSUED WITH A CARD WHICH IS HEADED "REID'S HOLDINGS (BELLEVILLE) LIMITED" FOLLOWED BY ITS ADDRESS AND PROVIDING A SPACE FOR EMPLOYEE'S NAME, SIGNATURE AND ADDRESS. THE CARD, HOWEVER, READS:

"EMPLOYED ON CONTRACT TO:

UNION CARBIDE CANADA LIMITED
BELLEVILLE, ONTARIO

.....
AUTHORIZED SIGNATURE"

THE CARD PRESENTED TO THE BOARD WAS THAT OF RONALD M. MCEACHERN AND THE AUTHORIZED SIGNATURE IS THAT OF J. E. DIXON, AN OFFICER OF UNION CARBIDE CANADA LIMITED.

20. THE FOREGOING IS A SUMMARY OF THE EVIDENCE WHICH IS RELIED UPON IN SUPPORT OF THE ARGUMENT THAT REID'S IS THE EMPLOYER OF THE DRIVERS.

21. MCEACHERN ALSO TESTIFIED THAT AT THE TIME HE SIGNED HIS APPLICATION FOR EMPLOYMENT HE WAS INTERVIEWED BY AN OFFICER OF UNION CARBIDE AND UNDERSTOOD HE WAS BEING EMPLOYED BY THAT FIRM. HE WAS NOT INTERVIEWED BY ANYONE FROM REID'S.

22. HE STATED THAT A GROUP OF THE DRIVERS EMPLOYED ON UNION CARBIDE TRUCKS WERE MEMBERS OF AN ASSOCIATION WHICH MET WITH AND ATTEMPTED TO BARGAIN WITH OFFICERS OF UNION CARBIDE. THE DRIVERS ARE EACH ISSUED WITH A UNION CARBIDE DRIVERS MANUAL. THIS MANUAL PROVIDES, IN CLAUSE 7, THAT DRIVERS SHALL BE REPRESENTED BY A GROUP OF THREE WHO SHALL ACT AS SPOKESMEN FOR THE ENTIRE GROUP. NOBODY FROM REID'S WAS PRESENT AT THESE MEETINGS. HE IDENTIFIED AN ANNOUNCEMENT DATED DECEMBER 9, 1969 ADDRESSED TO DRIVERS, A COPY OF WHICH HE AND THE OTHER DRIVERS RECEIVED. THE FULL TEXT OF THE ANNOUNCEMENT IS AS FOLLOWS:

"DRIVERS

BY JANUARY 5, 1970 YOU WILL BE ENROLLED IN THE CROWN LIFE INSURANCE HEALTH BENEFIT PLAN IF YOUR APPLICATIONS HAVE BEEN COMPLETED.

AS PARTICIPANTS IN THE PLAN, YOU WILL BE ASSESSED \$1.50 PER MONTH WHICH REPRESENTS THE DIFFERENTIAL BETWEEN THE SEMI-PRIVATE AND WARD RATES YOU ARE NOW PAYING. THE BALANCE OF THE PLANS COST (\$8.44 PER MONTH) WILL BE ABSORBED.

EFFECTIVE JANUARY 5, 1970 THE FOLLOWING SALARY INCREASES WILL BE MADE:

MILEAGE RATE - FROM 8.3¢ TO 9¢
 HOURLY RATE - FROM \$2.50 TO \$2.65
 STOPOVER RATE - FROM \$12.00 TO \$14.00

ADDITIONAL INCREASES ARE ANTICIPATED FOR THE FALL OF 1970 AND THE SUMMER OF 1971. WE WILL REVIEW DEVELOPMENTS IN THIS AREA WITH THE REPRESENTATIVES AT THE APPROPRIATE TIME."

AS WE NOTED PREVIOUSLY, THE CROWN LIFE PLAN IS ISSUED IN THE NAME OF REID'S.

23. McEACHERN TESTIFIED THAT THE DRIVERS WERE INCLUDED IN THE INSURANCE PLAN AS THE RESULT OF DISCUSSIONS BETWEEN THE DRIVERS, COMMITTEE AND UNION CARBIDE.

24. THE WITNESS McEACHERN ALSO IDENTIFIED A LETTER ADDRESSED TO HIMSELF AND TWO OTHER DRIVERS, H. HEWITT AND H. RUSHNELL. THE SUBJECT MATTER OF THE LETTER IS STATED TO BE "DRIVER MEETING". THE LETTER IS DATED DECEMBER 21, 1971 AND IS UPON LETTERHEAD OF UNION CARBIDE. HE IDENTIFIED THE SIGNATURE AS THAT OF SIMEONE, AN OFFICER OF UNION CARBIDE. THE LETTER STATES:

"A MEETING HAS BEEN SET UP FOR JANUARY 22ND,
1972 IN BELLEVILLE.

PLEASE PROVIDE US WITH A LIST OF TOPICS YOU
WISH TO DISCUSS AT THIS MEETING."

25. A FURTHER LETTER DATED JANUARY 18, 1972 WITH RESPECT TO THE SAME SUBJECT MATTER AND SIGNED AGAIN BY J. SIMEONE WAS RECEIVED BY McEACHERN. IT WAS ALSO ON UNION CARBIDE LETTERHEAD AND WAS ADDRESSED TO THE SAME THREE DRIVERS. IT READS AS FOLLOWS:

"WE ACKNOWLEDGE RECEIPT OF YOUR TOPICS FOR
DISCUSSION RE ABOVE MEETING.

DUE TO THE NATURE OF SOME OF THESE ITEMS
WE WISH TO CONDUCT A FURTHER INVESTIGATION
PRIOR TO THE MEETING.

THEREFORE, OUR MEETING SCHEDULED FOR JANU-
ARY 22, 1971 IS HEREBY POSTPONED AND WE
WILL ADVISE YOU OF A NEW SCHEDULED DATE."

THE WITNESS STATED THAT THE TOPICS FOR DISCUSSION WERE WAGES AND WORKING CONDITIONS.

26. THERE WAS ALSO FILED A LETTER DATED FEBRUARY 15, 1971 ADDRESSED TO "ALL DRIVERS". IT IS ON THE LETTERHEAD OF UNION CARBIDE. IT READS:

"1. PLEASE ATTACH BILLS OF LADING TO
LOG SHEETS RATHER THAN CRAMMING THE WHOLE
THING INTO THE ENVELOPES YOU ARE NOW USING.

2. THE MAJORITY OF DRIVERS ARE SUP-
POSEDLY ON DUTY OR DRIVING FOR PERIODS OF
APPROXIMATELY 10 TO 15 HOURS ON A DAILY
BASIS WITHOUT ANY BREAK WHATSOEVER. I FIND
THIS DIFFICULT TO ACCEPT WHICH WILL EXPLAIN
ADJUSTMENTS IN FUTURE PAYCHEQUES.

3. DRIVERS HELD UP FOR REPAIRS ETC.
WILL BE PAID AFTER A PERIOD OF TWO HOURS
HAS ELAPSED. (EMPHASIS ADDED)

J. E. DIXON"

27. THE DRIVERS MANUAL, WHICH IS A COMPREHENSIVE STATEMENT OF OPERATIONAL RULES, STATES THAT IF A DRIVER IS HELD OVER AT THE REQUEST OF UNION CARBIDE, HE SHALL BE PAID A SPECIFIED AMOUNT FOR FOOD AND LODGING. THERE IS NO REFERENCE MADE TO REID'S PARTICIPATION IN THIS ARRANGEMENT. SECTION 20 OF THE MANUAL STATES THAT DETAILS OF INSURANCE BENEFITS CAN BE OBTAINED "BY CONTACTING A SPOKESMAN (ITEM 7) OR THE EMPLOYMENT AGENCY". THIS INTERESTING TERMINOLOGY APPLIES APPARENTLY TO REID'S.

28. MCEACHERN GAVE UNCONTRADICTED TESTIMONY THAT DRIVERS HAVE BEEN DISCIPLINED BY UNION CARBIDE WITH, APPARENTLY, NO REFERENCE TO REID'S. IN ARGUING THAT THE EMPLOYER IN THE PRESENT SITUATION IS UNION CARBIDE, THE UNION RELIED HEAVILY UPON THE ELEMENT OF CONTROL AS DECISIVE OF THE QUESTION. THERE CAN BE NO DOUBT UPON THE EVIDENCE THAT THE DAY TO DAY OPERATIONAL CONTROL OF THE DRIVERS LAY WHOLLY WITH UNION CARBIDE AND THAT REID'S PLAYED NO PART WHATSOEVER IN THAT AREA OF THE RELATIONSHIPS UNDER CONSIDERATION. THE BOARD RECOGNIZES THAT CONTROL IS ONE FACTOR TO BE CONSIDERED, AMONG OTHERS, WHEN THE BOARD IS CONFRONTED WITH THE PROBLEM OF DETERMINING WHO MIGHT BE THE EMPLOYER OF PERSONS CONCERNED IN PROCEEDINGS BEFORE IT. IN SUCH A CONTEXT, THE ELEMENT OF CONTROL DOES NOT, HOWEVER, CARRY THE SAME WEIGHT AS IT DOES IN THE RESOLUTION OF PROBLEMS DEALING WITH THE ASSIGNMENT OF LIABILITY FOLLOWING THE COMMISSION OF A TORT.

29. IT APPEARS CLEARLY FROM THE EVIDENCE THAT THE DRIVERS CONCERNED DEAL DIRECTLY WITH UNION CARBIDE, TO THE COMPLETE EXCLUSION OF REID'S, WITH RESPECT TO HIRING - NOTWITHSTANDING THE FORM USED - WORKING CONDITIONS AND WAGES THROUGH A COMMITTEE RECOGNIZED BY UNION CARBIDE. IN ADDITION, AS NOTED ABOVE, COMPLETE CONTROL OF THE MANNER OF THEIR DAY TO DAY OPERATIONS LIES IN THE HANDS OF UNION CARBIDE INCLUDING THE EXERCISE OF DISCIPLINARY POWERS BY THE LATTER COMPANY. ALL OF THESE ARE THE KIND OF MATTERS THAT COMMONLY CHARACTERIZE THE EMPLOYER EMPLOYEE RELATIONSHIP. ONLY THE MERE MECHANICS OF PAYMENT OF WAGES AND FRINGE BENEFITS APPEAR TO REST WITH REID'S.

30. ON THE TOTALITY OF THE EVIDENCE, WE FIND THAT, FOR THE PURPOSES OF AND WITHIN THE MEANING OF THE LABOUR RELATIONS ACT, THE DRIVERS CONCERNED ARE EMPLOYEES OF UNION CARBIDE AND NOT OF REID'S.

31. THE BOARD DIRECTS THAT THE MATTER BE SET DOWN FOR CONTINUATION OF HEARING TO ENABLE THE PARTIES TO ADDUCE SUCH

EVIDENCE AND MAKE SUCH SUBMISSIONS AS THEY DEEM PROPER WITH RESPECT TO THE JURISDICTION OF THE BOARD TO PROCEED WITH THIS APPLICATION AND ALL OUTSTANDING ISSUES.

2184-72-R: INTERNATIONAL HARVESTER COMPANY OF CANADA, LIMITED (APPLICANT) V. THE PATTERN MAKERS' ASSOCIATION OF HAMILTON & VICINITY, AFFILIATE OF THE PATTERN MAKERS' LEAGUE OF NORTH AMERICA AFL-CIO (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

APPEARANCES AT THE HEARING: G. S. FREEMAN AND P. M. LANZ FOR THE APPLICANT; JAMES LESLIE AND JAMES K. STEWART FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 28, 1972.

1. THE NAME "PATTERNMAKERS' ASSOCIATION OF HAMILTON AND VICINITY" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "THE PATTERN MAKERS' ASSOCIATION OF HAMILTON & VICINITY, AFFILIATED OF THE PATTERN MAKERS' LEAGUE OF NORTH AMERICA AFL-CIO".

2. THIS IS AN APPLICATION UNDER SECTION 51(2) OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

3. THE FACTS WHICH ARE NOT IN DISPUTE, ARE AS FOLLOWS: THE RESPONDENT'S PATTERN SHOP WAS CLOSED IN NOVEMBER OF 1970 ALONG WITH ITS FOUNDRY OPERATION AND IN THIS REGARD, THE LAST OF THE PATTERNMAKERS IN ITS EMPLOY WAS LAID OFF ON NOVEMBER 27, 1970.

4. BY LETTER DATED SEPTEMBER 13, 1971, MR. LESLIE, PRESIDENT OF THE RESPONDENT ADVISED THE APPLICANT AS FOLLOWS:

"I HAVE BEEN INSTRUCTED BY THIS ASSOCIATION TO WRITE YOU REGARDING THE OPENING OF NEGOTIATIONS FOR A NEW COLLECTIVE AGREEMENT TO REPLACE THE ONE THAT EXPIRES OCTOBER 8, 1971.

IN VIEW OF THE FACT THAT YOU NO LONGER EMPLOY PATTERNMAKERS AT YOUR HAMILTON PLANT WE FEEL THAT THE FOLLOWING MIGHT MAKE A LOGICAL BASIS FOR AGREEMENT.

THE AGREEMENT DATED FEBRUARY 18, 1969, WHICH EXPIRES OCTOBER 8, 1971 SHALL REMAIN IN EFFECT UNTIL SUCH TIME THE

COMPANY HIRES A PATTERNAKER AT ITS HAMILTON PLANT. IF AND WHEN THE COMPANY HIRES A PATTERNAKER AT ITS HAMILTON PLANT THE COMPANY SHALL OPEN NEGOTIATIONS WITH THIS ASSOCIATION TO REACH A NEW AGREEMENT. THE DATE ON WHICH THE COMPANY HIRES A PATTERNAKER SHALL BE REGARDED AS THE EXPIREY DATE OF THE OLD CONTRACT FOR BARGAINING PURPOSES (SIC)."

5. BY LETTER DATED OCTOBER 6, 1971, THE APPLICANT REPLIED, AS FOLLOWS:

"INASMUCH AS THE COMPANY DOES NOT HAVE ANY PATTERN MAKERS IN ITS EMPLOY AND CANNOT FORESEE THE NEED TO AGAIN EMPLOY ANYONE IN THIS OCCUPATION, IT IS OUR OPINION THAT NO PRACTICAL PURPOSE WOULD BE SERVED IN MAINTAINING THE COLLECTIVE AGREEMENT.

IF A FORMER PATTERN MAKER WERE RECALLED IT WOULD NECESSARILY BE TO SOME OCCUPATION OTHER THAN PATTERN MAKING WHICH WOULD BE OUTSIDE THE SCOPE OF THE PATTERN MAKERS AGREEMENT."

6. THE PRINCIPLE TO BE APPLIED WHERE A COMPANY SEEKS A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE UNION IN CIRCUMSTANCES WHERE THE OPERATIONS OF THE COMPANY TO WHICH ITS APPLICATION PERTAINS HAD BEEN DISCONTINUED AND HENCE HAD NO EMPLOYEES IN THIS REGARD, IS SET OUT IN THE BURNS & Co. LIMITED CASE, 61 C.L.L.C. 953. IN THIS CASE, THE BOARD, IN ADAPTING THE LANGUAGE PREVIOUSLY UTILIZED IN THE SOLE CASE, (1949) D.L.S. 7-2105, TO THE PROVISIONS OF THE LABOUR RELATIONS ACT, R.S.O. 1960, c. 202, STATED AS FOLLOWS:

"A [TERMINATION] PROCEEDING IS A TYPE OF REPRESENTATION PROCEEDING, THAT IS, IT HAS AS ITS OBJECTIVE THE DETERMINATION OF A QUESTION OF REPRESENTATION. AN APPLICATION FOR [A DECLARATION TERMINATING BARGAINING RIGHTS] IS, IN EFFECT, A REQUEST THAT THE BOARD EXAMINE INTO AND DETERMINE THE QUESTION WHETHER THE EMPLOYEES AFFECTED BY THE APPLICATION DESIRE TO CONTINUE TO BE REPRESENTED BY THEIR...BARGAINING AGENT. THE BASIS UPON WHICH [A DECLARATION TERMINATING BARGAINING RIGHTS] MAY BE GRANTED IS THAT 'A BARGAINING AGENT NO LONGER REPRESENTS...THE EMPLOYEES IN [THE BARGAINING UNIT]' THAT CRITERION, WE SUGGEST, PRESUMES

THE EXISTENCE OF THE UNIT, OR TO STATE IT IN ANOTHER WAY, PRESUMES THE PRESENCE IN THE UNIT OF EMPLOYEES WHO MAY SIGNIFY WHETHER OR NOT THEY WISH THE BARGAINING AGENT CONCERNED TO CONTINUE TO REPRESENT THEM. IN THE PRESENT INSTANCE THAT CONDITION DOES NOT OBTAIN."

7. THE ABOVE-QUOTED PASSAGE HAS BEEN CONSISTENTLY APPLIED BY THE BOARD IN CIRCUMSTANCES ESSENTIALLY SIMILAR TO THOSE OF THE INSTANT CASE. IN THIS REGARD, SEE THE BLH-BERTRAM LTD. CASE, OLRB M.R. OCTOBER, 1967, P. 652; THE SCARBOROUGH PUBLIC LIBRARY BOARD CASE, OLRB M.R. MAY, 1968 AND THE TWO MORE RECENT BLH-BERTRAM LIMITED CASES, OLRB M.R. JANUARY, 1969, AT PAGES 1032 AND 1035 RESPECTIVELY.

8. FURTHER, WE CAN FIND NOTHING IN THE PRESENT LEGISLATION (THE LABOUR RELATIONS ACT, R.S.O., 1970, C. 232) WHICH COULD BE INTERPRETED AS RENDERING THE EFFECTS OF THE ABOVE-QUOTED PASSAGE INOPERATIVE AS OF THE DATE OF THE FILING OF THIS APPLICATION.

9. HAVING REGARD THEREFORE TO ALL OF THE CIRCUMSTANCES HEREIN AND TAKING INTO ACCOUNT THE PRINCIPLES ABOVE CITED, THIS APPLICATION IS ACCORDINGLY DISMISSED.

CASE LISTINGS JULY 1972

	PAGE
1. CERTIFICATION	
(A) BARGAINING AGENTS CERTIFIED	171
(B) APPLICATIONS DISMISSED	183
(C) APPLICATIONS WITHDRAWN	189
2. APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	190
3. APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS	191
4. APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL	192
5. APPLICATIONS FOR CONSENT TO PROSECUTE	192
6. COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)	193
7. APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT	193
8. JURISDICTIONAL DISPUTE	194
9. APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))	194
10. REFERENCE TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)	194
11. APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	194

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JULY 1972

BARGAINING AGENTS CERTIFIED DURING JULY

NO VOTE CONDUCTED

357-71-R: NURSES' ASSOCIATION MACASSA LODGE (APPLICANT) v. THE CORPORATION OF THE CITY OF HAMILTON (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT ITS MACASSA LODGE IN HAMILTON, SAVE AND EXCEPT THE DIRECTOR OF NURSING AND PERSONS ABOVE THIS RANK." (10 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FOREGOING).

[1972] 2 OLRB M.R. - PAGE 697.

1049-71-R: PIPE LINE CONTRACTORS ASSOCIATION OF CANADA (APPLICANT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (RESPONDENT) v. THE UTILITY CONTRACTORS ASSOCIATION OF ONTARIO (INTERVENER).

UNIT: "ALL EMPLOYERS OF EMPLOYEES FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE PROVINCE OF ONTARIO IN THE PIPELINES SECTOR." (NO EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE APPLICANT, RESPONDENT AND INTERVENER THAT THE KIND OF WORK PRESENTLY PERFORMED UNDER THE UTILITIES CONTRACTORS COLLECTIVE AGREEMENTS WILL CONTINUE TO BE PERFORMED UNDER THOSE COLLECTIVE AGREEMENTS AND THE KIND OF WORK PRESENTLY PERFORMED UNDER PIPE-LINE CONTRACTORS COLLECTIVE AGREEMENTS WILL CONTINUE TO BE PERFORMED UNDER THOSE COLLECTIVE AGREEMENTS).

1050-71-R: PIPE LINE CONTRACTORS ASSOCIATION OF CANADA (APPLICANT) v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA ON BEHALF OF LOCALS 91, 141, 230, 879, 880, 990, 989 (RESPONDENT).

UNIT: "ALL EMPLOYERS OF EMPLOYEES FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE PROVINCE OF ONTARIO IN THE PIPELINES SECTOR." (NO EMPLOYEES IN THE UNIT).

1051-71-R: PIPE LINE CONTRACTORS ASSOCIATION OF CANADA (APPLICANT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL (RESPONDENT) v. THE UTILITY CONTRACTORS ASSOCIATION OF ONTARIO (INTERVENER).

UNIT: "ALL EMPLOYERS OF EMPLOYEES FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE PROVINCE OF ONTARIO IN THE PIPELINES SECTOR." (NO EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED

THE AGREEMENT OF THE APPLICANT, RESPONDENT AND INTERVENER THAT THE KIND OF WORK PRESENTLY PERFORMED UNDER THE UTILITIES CONTRACTORS COLLECTIVE AGREEMENTS WILL CONTINUE TO BE PERFORMED UNDER THOSE COLLECTIVE AGREEMENTS AND THE KIND OF WORK PRESENTLY PERFORMED UNDER PIPELINE CONTRACTORS COLLECTIVE AGREEMENTS WILL CONTINUE TO BE PERFORMED UNDER THOSE COLLECTIVE AGREEMENTS.).

1052-71-R: PIPE LINE CONTRACTORS ASSOCIATION OF CANADA (APPLICANT) V. UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPE FITTING INDUSTRY OF THE UNITED STATES & CANADA, AND ITS LOCALS 46, 628, 663 AND 254 (RESPONDENT).

UNIT: "ALL EMPLOYERS OF EMPLOYEES FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE PROVINCE OF ONTARIO IN THE PIPELINES SECTOR." (NO EMPLOYEES IN THE UNIT).

1738-71-R: NURSES' ASSOCIATION GRACE HOSPITAL, WINDSOR (APPLICANT) V. THE SALVATION ARMY GRACE HOSPITAL (WINDSOR) (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT WINDSOR ENGAGED IN NURSING CARE, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (293 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

1890-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE DUFFERIN-PEEL COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (86 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

[1972] 2 OLRB M.R. - PAGE 686.

1954-72-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693, OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. KAKABEKA TIMBER LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS SAWMILL COMPLEX AND YARDS, IN THE TOWNSHIP OF O'CONNOR, IN THE DISTRICT OF THUNDER BAY, ONTARIO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (27 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2032-72-R: UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. THE NIAGARA WIRE WEAVING COMPANY LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELLAND SAVE AND EXCEPT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE AND SALES STAFF." (23 EMPLOYEES IN THE UNIT).

[1972] 2 OLRB M.R. - PAGE 688.

2033-72-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. THE CORPORATION OF THE COUNTY OF SIMCOE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUNSET MANOR, HOME FOR THE AGED, AT COLLINGWOOD, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, ADJUVANTS, SUPERVISORS, FOREMEN PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (66 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2046-72-R: LOCAL UNION 329, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK & DISTILLERY WORKERS OF AMERICA, C.I.O., C.L.C. (APPLICANT) V. BREWERS' WAREHOUSING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS DISTRICT OFFICE AT OTTAWA, SAVE AND EXCEPT FOREMAN OR MANAGER, PERSONS ABOVE THE RANK OF FOREMAN OR MANAGER AND THE SECRETARY TO THE DISTRICT MANAGER." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2047-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. METAL SHAPES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (10 EMPLOYEES IN THE UNIT).

2051-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. FLOORCO LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AS PARQUET BLOCK LAYERS WORKING AT AND OUT OF THE MUNICIPALITY OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (29 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2054-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SARGENT & GREENLEAF OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

2056-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE ESSEX COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, ONE SECRETARY TO THE SECRETARY-TREASURER, ONE SECRETARY TO THE BUSINESS ADMINISTRATOR AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

2060-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE HEARST BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HEARST ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERINTENDENT OF PLANT AND MAINTENANCE AND PERSONS ABOVE THE RANK OF SUPERINTENDENT OF PLANT AND MAINTENANCE, AND OFFICE STAFF." (12 EMPLOYEES IN THE UNIT).

2063-72-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) v. COCA-COLA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT KITCHENER, SAVE AND EXCEPT SALES SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SALES SUPERVISOR AND FOREMAN." (54 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2071-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. ITT LIGHTING FIXTURE DIVISION A DIVISION OF ITT CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (28 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2072-72-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 633, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. THE OSHAWA GROUP LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE ONTARIO FOOD DIVISION OF THE OSHAWA GROUP LIMITED AT ITS MEAT DEPARTMENT DISTRIBUTION CENTRE IN HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (37 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2079-72-R: NURSES' ASSOCIATION VICTORIAN ORDER OF NURSES OTTAWA CARLETON BRANCH (APPLICANT) V. VICTORIAN ORDER OF NURSES OTTAWA CARLETON BRANCH (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES IN THE EMPLOY OF THE VICTORIAN ORDER OF NURSES OTTAWA CARLETON BRANCH, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (29 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2080-72-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. HEARST FARMERS' CO-OPERATIVE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT HEARST, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (19 EMPLOYEES IN THE UNIT).

2084-72-R: THE OTTAWA NEWSPAPER GUILD LOCAL 205 OF THE NEWSPAPER GUILD (APPLICANT) V. THE JOURNAL PUBLISHING COMPANY OF OTTAWA LIMITED (RESPONDENT).

UNIT: "ALL PART-TIME DISTRICT MANAGERS AND PART-TIME DISTRICT MANAGERS USED AS SPARE DISTRICT MANAGERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA CARLETON." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2086-72-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. OSF INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, EMPLOYEES COVERED BY AN EXISTING COLLECTIVE AGREEMENT BETWEEN THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2679 AND OSF INDUSTRIES LIMITED AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2087-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE TISDALE WHITNEY AMBULANCE SERVICE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE TISDALE WHITNEY AMBULANCE SERVICE OWNED AND OPERATED BY J. A. CRONMILLER AT SOUTH PORCUPINE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2088-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. OLYMPIA & YORK DEVELOPMENTS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PLACE BELL CANADA AT OTTAWA, SAVE AND EXCEPT ASSISTANT SUPERINTENDENT, PERSONS ABOVE THE RANK OF ASSISTANT SUPERINTENDENT, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS HIRED FOR THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2090-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. KELSEY-HAYES CANADA LIMITED (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, TIME AND MOTION STUDY PERSONNEL, SALES REPRESENTATIVES, BUDGET ANALYSTS, PRIVATE SECRETARY TO THE PRESIDENT, PRIVATE SECRETARY TO THE VICE-PRESIDENT, PRIVATE SECRETARY TO THE SECRETARY-TREASURER, STUDENTS EMPLOYED ON A UNIVERSITY CO-OPERATIVE BASIS AND EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (11 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2092-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. H. POITRAS ENTERPRISES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ELLIOT LAKE, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

2093-72-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. COCA-COLA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NIAGARA FALLS, SAVE AND EXCEPT FOREMEN, SALES SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SALES SUPERVISOR, AND OFFICE STAFF." (47 EMPLOYEES IN THE UNIT).

2101-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF MATTAWA (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MATTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2105-72-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. ARMALITE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

2117-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT) V. THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AT MORROW PARK, 3377 BAYVIEW AVENUE IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (6 EMPLOYEES IN THE UNIT).

2149-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. WEST LINCOLN AMBULANCE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN AMBULANCE SERVICE OPERATIONS, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (11 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2155-72-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS - LOCAL UNION 586 (APPLICANT) V. CARL SAUNDERS LTD. (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND APPRENTICE ELECTRICIANS EMPLOYED BY THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2156-72-R: TEAMSTERS UNION LOCAL 990 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. F. A. TUCKER (ONTARIO) LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER).

UNIT: "ALL TRUCK DRIVERS AND WAREHOUSEMEN IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2167-72-R: DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (APPLICANT) V. FRANKEL STRUCTURAL STEEL LIMITED (RESPONDENT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO WHO ARE EMPLOYED AS DRAFTSMEN, SAVE AND EXCEPT SQUAD LEADERS AND PERSONS ABOVE THE RANK OF SQUAD LEADER." (31 EMPLOYEES IN THE UNIT). (HAVING

REGARD TO THE REPRESENTATIONS OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES, FOR THE PURPOSES OF CLARITY, THAT CHECKERS, CHECKER/DETAILERS, DETAILERS AND JUNIORS ARE INCLUDED IN THE BARGAINING UNIT, BUT THAT BLUEPRINT OPERATORS AND SHOP BILLERS ARE NOT INCLUDED IN THE BARGAINING UNIT.).

2173-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. PETE HEXAMER ELECTRIC (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2175-72-R: HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743, WINDSOR, ONTARIO, AFFILIATED WITH HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION; AFL-CIO (APPLICANT) V. DORNA REALTY ASSOCIATES LIMITED, (OPERATING THE SHERATON-VISCOUNT MOTOR HOTEL) (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL DESK CLERKS AND SWITCHBOARD OPERATORS OF THE RESPONDENT AT ITS SHERATON-VISCOUNT MOTOR HOTEL AT WINDSOR, SAVE AND EXCEPT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (14 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2183-72-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. EXTENDICARE (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 1925 STEELES AVENUE EAST IN METROPOLITAN TORONTO, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, OFFICE STAFF, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (61 EMPLOYEES IN THE UNIT).

2188-72-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION (APPLICANT) V. MODULAR ARCHITECTURAL COMPONENTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT COBOURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2192-72-R: INTERNATIONAL BROTHERHOOD OF BOOKBINDERS AND BINDERY WOMEN, LOCAL 226 (APPLICANT) V. LONDON PRINTING & LITHOGRAPHING CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS BINDERY OPERATIONS AT LONDON, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (32 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT SHIPPERS ARE NOT INCLUDED IN THE ABOVE-DEFINED BARGAINING UNIT.).

2194-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. GRAHAM & GRAHAM LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF LAMBTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

2195-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. BOT CONSTRUCTION CO. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF LAMBTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

2206-72-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 540 (APPLICANT) V. INDUSTRIAL STEELFAB DIVISION OF STEWARTS AND LLOYDS OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GEORGETOWN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES AND OFFICE STAFF, RADIOGRAPHY TECHNICIANS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2208-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. SUPERIOR INDUSTRIAL DOOR ERECTORS (RESPONDENT).

UNIT: "ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (NO EMPLOYEES IN THE UNIT).

2209-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. SCOTT-JACKSON CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2212-72-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 343 (APPLICANT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION LOCAL 414, AFL CIO CLC (RESPONDENT).

UNIT: "ALL STAFF REPRESENTATIVES OF THE RESPONDENT IN ONTARIO, SAVE AND EXCEPT THE LOCAL DIRECTOR AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

2233-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. THE MITCHELL CONSTRUCTION COMPANY (CANADA) (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

2237-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TEMISKAMING HOSPITALS - NEW LISKEARD UNIT (RESPONDENT).

UNIT: "ALL LAY EMPLOYEES OF THE RESPONDENT AT NEW LISKEARD, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, CHIEF ENGINEER, MATRONS, WATCHMEN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (32 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2245-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. G. M. GEST LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2265-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. WAYNCO LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WELLINGTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (25 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FOREGOING).

2287-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. SONNY'S CRANE RENTAL LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WATERLOO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2298-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ALNOR EARTHMOVING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

2309-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. CEMIS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

2316-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION #38 (APPLICANT) V. PENINSULA MAINTENANCE CONTRACTING (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

2048-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WILLOCK TRUCK EQUIPMENT CO. LTD. (RESPONDENT) V. WILLOCK TRUCK EQUIPMENT CO. LTD. EMPLOYEES' ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (27 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		25
NUMBER OF PERSONS WHO CAST BALLOTS	25	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	17	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	8	

2147-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. FOSECO CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (123 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		95
NUMBER OF PERSONS WHO CAST BALLOTS	87	
BALLOTS SEGREGATED AND NOT COUNTED	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	45	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	38	

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

1762-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. KAPUSKASING BOARD OF EDUCATION (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

UNIT: "ALL CARPENTERS', CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ON CONSTRUCTION PROJECTS WORKING AT OR OUT OF KAPUSKASING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (16 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		17
NUMBER OF PERSONS WHO CAST BALLOTS	17	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	16	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1	

1924-72-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, A.F.L.C.I.O.C.L.C. (APPLICANT) V. SPANCRETE OF ONTARIO DIVISION OF SPANCRETE LIMITED (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER).

- AND -

1937-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

(APPLICANT) V. SPANCRETE OF ONTARIO DIVISION OF SPANCRETE LIMITED (RESPONDENT) V. UNITED CEMENT, LIME AND GYPSUM WORKERS INT. UNION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF ESQUESING, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, TECHNICAL AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	14
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT-UNITED CEMENT, LIME	
AND GYPSUM WORKERS	7
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT-UNITED BROTHERHOOD OF	
CARPENTERS	4

1926-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE OXFORD COUNTY BOARD OF EDUCATION (RESPONDENT) V. THE OXFORD COUNTY CUSTODIANS, MAINTENANCE AND TRANSPORTATION ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (165 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	159
NUMBER OF PERSONS WHO CAST BALLOTS	137
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	93
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	44

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JULY

NO VOTE CONDUCTED

728-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. BIRMINGHAM CONSTRUCTION LIMITED (RESPONDENT). (3 EMPLOYEES).

[1972] 2 OLRB M.R. - PAGE 722.

1191-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. BAY-SIDE INDUSTRIES LIMITED (RESPONDENT) V. MILLWRIGHTS' LOCAL 2309, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER). (6 EMPLOYEES).

1445-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. PATCHOQUE PLYMOUTH HAWKESBURY MILLS, A DIVISION OF AMOCO CANADA PETROLEUM COMPANY LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (224 EMPLOYEES).

[1972] 2 OLRB M.R. - PAGE 747.

1849-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 249 KINGSTON ONTARIO (APPLICANT) V. J.G. FITZPATRICK CONSTRUCTION LTD. (RESPONDENT). (4 EMPLOYEES).

2070-72-R: SUDBURY MINE MILL & SMELTER WORKERS' UNION LOCAL 598 (APPLICANT) V. FALCONBRIDGE NICKEL MINES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS FALCONBRIDGE SERVICES DIVISION AT #1 AND #2 SMELTER POWERHOUSES IN THE SUDBURY DISTRICT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS COVERED OR EXCLUDED BY THE PRESENT COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT AND/OR BETWEEN THE UNITED STEELWORKERS LOCAL 6855 AND THE RESPONDENT." (9 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2113-72-R: THE LENNOX AND ADDINGTON CUSTODIAN ASSOCIATION (APPLICANT) V. THE LENNOX AND ADDINGTON COUNTY BOARD OF EDUCATION (RESPONDENT). (83 EMPLOYEES).

2169-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION #493 (APPLICANT) V. VEGH SONS ENTERPRISES (RESPONDENT) V. EMPLOYEE (OBJECTOR). (10 EMPLOYEES).

2182-72-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. AMCO PRODUCTS AND CENTRAL STORE FIXTURES AND FURNITURE MANUFACTURING COMPANY, DIVISIONS OF CENTRAC INDUSTRIES LIMITED (RESPONDENT). (125 EMPLOYEES).

2186-72-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 597 (APPLICANT) V. DUFFERIN MATERIALS AND CONSTRUCTION LIMITED (RESPONDENT). (23 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

2018-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. DRUMMOND, McCALL & Co. LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (119 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	117
NUMBER OF PERSONS WHO CAST BALLOTS	112
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	31
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	81

2045-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE PEEL COUNTY BOARD OF EDUCATION (RESPONDENT) V. THE PEEL COUNTY BOARD OF EDUCATION CARETAKERS' ASSOC. (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF PEEL, ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT ASSISTANT SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT SUPERVISOR AND FOREMAN, OFFICE STAFF, TECHNICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (347 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	352
NUMBER OF PERSONS WHO CAST BALLOTS	336
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	147
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	187

2075-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. NISSAN AUTOMOBILE COMPANY (CANADA) LTD. (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT CONCORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, GENERAL OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (29 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	27
NUMBER OF PERSONS WHO CAST BALLOTS	21
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	10

2124-72-R: INTERNATIONAL CHEMICAL WORKERS UNION AFL-CIO-CLC (APPLICANT) V. UNION CARBIDE OF CANADA LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT, FIBRES GROUP,

AT ITS MANUFACTURING FACILITIES, ARNPRIOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, STOREKEEPER, EMPLOYEES EMPLOYED IN THE RESEARCH AND DEVELOPMENT DEPARTMENT, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (212 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	207
NUMBER OF PERSONS WHO CAST BALLOTS	199
BALLOTS SEGREGATED AND NOT COUNTED	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	69
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	120

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

1570-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ST. THOMAS SANITARY COLLECTION SERVICE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS ST. THOMAS OPERATION, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (22 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	22
NUMBER OF PERSONS WHO CAST BALLOTS	16
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF ST. THOMAS SANITARY COLLECTION SERVICE LTD. EMPLOYEES ASSOCIATION	15

1763-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. BUSH GAMBLE COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (14 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	8

1921-72-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION A.F.L.C.I.O.C.L.C. (APPLICANT) V. HIGHCREST PROPERTIES (LONDON) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF WESTMINSTER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (21 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	22
NUMBER OF PERSONS WHO CAST BALLOTS	22
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	17

1922-72-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION A.F.L.C.I.O.C.L.C. (APPLICANT) V. N - J SPIVAK LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF WESTMINSTER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (23 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	23
NUMBER OF PERSONS WHO CAST BALLOTS	21
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	9
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	11

1929-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. FRONTENAC BEVERAGES REG'D (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	10

1944-72-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL WORKERS (APPLICANT) V. JOHNSON CARTAGE SUDBURY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OR WORKING OUT OF SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN OFFICE AND SALES STAFF, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENT EMPLOYED DURING THE SCHOOL VACATION PERIOD." (29 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		26
NUMBER OF PERSONS WHO CAST BALLOTS	24	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	11	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	12	

1953-72-R: INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (APPLICANT) V. HOLIDAY INN OF OSHAWA OF THE COMMONWEALTH HOLIDAY INNS OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS INN IN OSHAWA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, (INCLUDING FRONT DESK CLERKS, FRONT DESK CASHIERS, PAY-ROLL CLERKS, ACCOUNTING CLERKS, AUDIT DEPARTMENT STAFF, SECRETARIES), SECURITY STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (130 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		52
NUMBER OF PERSONS WHO CAST BALLOTS	45	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	12	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	33	

1957-72-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. MALETTE LUMBER (1969) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SAWMILL AND PLANING MILL IN THE TOWNSHIP OF OGDEN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTRUCTION WORKERS, EMPLOYEES WHO ARE COVERED BY A SUBSISTING COLLECTIVE AGREEMENT AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (105 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	85
NUMBER OF PERSONS WHO CAST BALLOTS	62
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	28
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	32

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JULY

2104-72-R: INTERNATIONAL UNION UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1962 (APPLICANT) V. C F T O TV CHANNEL NINE (RESPONDENT). (12 EMPLOYEES).

2148-72-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. CONSOLIDATED BUILDING MAINTENANCE COMPANY, DIVISION OF CONSOLIDATED MAINTENANCE SERVICES LIMITED (RESPONDENT). (205 EMPLOYEES).

2176-72-R: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION LOCAL 261, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. ALEXANDRA HOTEL (RESPONDENT). (53 EMPLOYEES).

2203-72-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) V. HEXAGON CONTRACTING LTD. (RESPONDENT). (4 EMPLOYEES).

2214-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. SUTHERLAND - SCHULTZ LIMITED (RESPONDENT). (2 EMPLOYEES).

2227-72-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. RADIANT BEAUTY SUPPLIES LIMITED (RESPONDENT). (14 EMPLOYEES).

2236-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493 (APPLICANT) V. ARMSTRONG HOLDINGS (BRAMPTON) LIMITED (RESPONDENT). (9 EMPLOYEES).

2250-72-R: ONTARIO HOUSING CORPORATION EMPLOYEES UNION, LOCAL 767, CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. DEL ZOTTO PROPERTY MANAGEMENT (RESPONDENT). (3 EMPLOYEES).

2303-72-R: LOCAL 787, SPRINKLER DIVISION, OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) V. GRINNELL FIRE PROTECTION SYSTEMS COMPANY LTD. (RESPONDENT). (10 EMPLOYEES).

2321-72-R: ONTARIO HOUSING CORPORATION EMPLOYEES LOCAL 767, CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. DEL ZOTTO PROPERTY MANAGEMENT (RESPONDENT). (6 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING JULY

1712-71-R: HILDA WAGNER (APPLICANT) V. SERVICE EMPLOYEES' UNION, LOCAL 210 (RESPONDENT) V. THE CORPORATION OF THE COUNTY OF LAMBTON (INTERVENER). (GRANTED).

UNIT: "THE EMPLOYEES OF THE INTERVENER EMPLOYED IN ITS TWILIGHT HAVEN AT PETROLIA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, REGISTERED NURSES, CHIEF ENGINEER, CHIEF CHEF, HOUSEKEEPER, ADJUVANT, PURCHASING AGENT, STOCKKEEPER, CRAFT INSTRUCTORS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (85 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	50
NUMBER OF PERSONS WHO CAST BALLOTS	46
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	20
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	26

1776-71-R: D. GLEESON ON BEHALF OF A GROUP OF EMPLOYEES (APPLICANT) V. THE TORONTO TYPOGRAPHICAL UNION NO. 91 ITU (RESPONDENT). (24 EMPLOYEES). (WITHDRAWN).

1945-72-R: ARTHUR CARTER (APPLICANT) V. CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 105 (RESPONDENT) V. THE UNIVERSITY OF WESTERN ONTARIO (INTERVENER). (GRANTED).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE EMPLOYER IN ITS MAIN HEATING PLANT, THE BOILER ROOM OF ALTHOUSE COLLEGE AND THE SKATING RINK AT LONDON, ONTARIO, SAVE AND EXCEPT THE CHIEF ENGINEER." (9 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	3
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	7

2106-72-R: DEERFIELD INVESTMENTS LIMITED (GUELPH MUSTANG DRIVE IN THEATRE) (APPLICANT) V. LOCAL 357 OF THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURES MACHINE OPERATORS OF THE UNITED STATES AND CANADA (RESPONDENT). (1 EMPLOYEE). (DISMISSED).

2144-72-R: R. LAIDLAW LUMBER CO. LIMITED (APPLICANT) V. CANADIAN WOOD-

WORKERS' UNION No. 167, N.C.C.L. (RESPONDENT). (3 EMPLOYEES). (GRANTED).

2164-72-R: A. I. MACPHERSON DONALD TAYLOR (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 230 (RESPONDENT). (7 EMPLOYEES). (DISMISSED).

2184-72-R: INTERNATIONAL HARVESTOR COMPANY OF CANADA, LIMITED (APPLICANT) V. THE PATTERN MAKERS' ASSOCIATION OF HAMILTON & VICINITY AFFILIATE OF THE PATTERN MAKERS' LEAGUE OF NORTH AMERICA AFL-CIO (RESPONDENT). (NO EMPLOYEES). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 762.

2260-72-R: JACK BENT (APPLICANT) V. McMANUS MOTORS EMPLOYEES' ASSOCIATION (RESPONDENT). (32 EMPLOYEES). (WITHDRAWN).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

JULY

2197-72-R: LUMBER AND SAWMILL WORKERS UNION LOCAL 2693, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. WHITEFISH PALLET COMPANY LIMITED WHITEFISH, ONTARIO (RESPONDENT) V. LUMBER AND SAWMILL WORKERS UNION LOCAL 2537, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (PREDECESSOR TRADE UNION). (GRANTED).

2198-72-R: LUMBER AND SAWMILL WORKERS UNION LOCAL 2693, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. PINELAND TIMBER COMPANY, LIMITED (RESPONDENT) V. LUMBER AND SAWMILL WORKERS UNION LOCAL 2537, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (PREDECESSOR TRADE UNION). (GRANTED).

2199-72-R: LUMBER AND SAWMILL WORKERS UNION LOCAL 2693, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. THE M. J. POUPORE LUMBER COMPANY LIMITED (RESPONDENT) V. LUMBER AND SAWMILL WORKERS UNION LOCAL 2537, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (PREDECESSOR TRADE UNION). (GRANTED).

2200-72-R: LUMBER AND SAWMILL WORKERS UNION LOCAL 2693, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. WILLIAM MILNE AND SONS LTD. (RESPONDENT) V. LUMBER AND SAWMILL WORKERS UNION LOCAL 2537, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (PREDECESSOR TRADE UNION). (GRANTED).

2201-72-R: LUMBER AND SAWMILL WORKERS UNION LOCAL 2693, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. THE ABITIBI PAPER COMPANY LTD., SAULT STE. MARIE DIVISION (RESPONDENT) V. LUMBER AND SAWMILL WORKERS UNION LOCAL 2537, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (PREDECESSOR TRADE UNION). (GRANTED).

2202-72-R: LUMBER AND SAWMILL WORKERS UNION LOCAL 2693, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. EDDY FOREST PRODUCTS LIMITED (RESPONDENT) V. LUMBER AND SAWMILL WORKERS UNION LOCAL 2537, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING
JULY

2262-72-U: THE TORONTO WESTERN HOSPITAL (APPLICANT) V. CANADIAN UNION OF GENERAL EMPLOYEES (RESPONDENT). (GRANTED).

[1972] 2 OLRB M.R. - PAGE 731.

2275-72-U: THE TORONTO WESTERN HOSPITAL (APPLICANT) V. CYRIL JONES, ANTONIO MAONE, HERNANDO CORONELL, JOHN BOYD, ALFREDO MORELLI, EVA POMBO, MARIA CABRAL, IRENE BIMANN AND MICHAEL DYAL (RESPONDENTS). (GRANTED).

[1972] 2 OLRB M.R. - PAGE 728.

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JULY

2000-72-U: INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (APPLICANT) V. COMMONWEALTH HOLIDAY INNS OF CANADA LIMITED (RESPONDENT). (WITHDRAWN).

2003-72-U: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. CONSOLIDATED MAINTENANCE SERVICES LIMITED (RESPONDENT). (GRANTED).

2081-72-U: CANADIAN ELEVATOR MANUFACTURERS, A DIVISION OF CANADIAN ELECTRICAL MANUFACTURERS ASSOCIATION (APPLICANT) V. INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 96 - OTTAWA (RESPONDENT). (GRANTED).

[1972] 2 OLRB M.R. - PAGE 720.

2137-72-U: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. UNION CARBIDE CANADA LIMITED, RONALD E. MORGAN, HAROLD A. POWERS (RESPONDENTS). (DISMISSED).

2179-72-U: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA (APPLICANT) V. CANADA DRY LIMITED (RESPONDENT). (WITHDRAWN).

2211-72-U: SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204 (APPLICANT) V. ROBERT CRUIKSHANK CLEANING CONTRACTORS (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)DISPOSED OF DURING JULY

1479-71-U: THOMAS J. BERRY (COMPLAINANT) V. THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (RESPONDENT). (DISMISSED).

1656-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. THE CORPORATION OF THE TOWNSHIP OF KING (RESPONDENT). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 691.

1788-71-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (COMPLAINANT) V. STERLING PACKERS LIMITED (RESPONDENT). (DISMISSED).

1894-72-U: JOHN ARBUTHNOT (COMPLAINANT) V. STANLEY NEWMARCH AND UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY LOCAL 46 (RESPONDENT). (WITHDRAWN).

2001-72-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) V. CONSOLIDATED MAINTENANCE SERVICES LIMITED (RESPONDENT). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 692.

2009-72-U: WILLIAM R. BROADLEY (COMPLAINANT) V. GATES RUBBER OF CANADA LTD. (RESPONDENT). (DISMISSED).

2024-72-U: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (COMPLAINANT) V. KAKABEKA TIMBER LIMITED (RESPONDENT). (WITHDRAWN).

2110-72-U: SAL MESSINA (COMPLAINANT) V. LOCAL 30 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION (RESPONDENT). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 719.

2180-72-U: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA (COMPLAINANT) V. CANADA DRY LIMITED (RESPONDENT). (WITHDRAWN).

2243-72-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2679, (COMPLAINANT) V. ACORN PRODUCTS CANADA LTD. (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

2269-72-M: NATIONAL SANITARY SUPPLY COMPANY OF LONDON (EMPLOYER) V. LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS', TEAMSTERS LOCAL 847 (TRADE UNION). (GRANTED).

2270-72-M: NATIONAL SANITARY SUPPLY CO. OF KITCHENER (EMPLOYER) V. LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS', TEAMSTERS LOCAL 847 (TRADE UNION). (GRANTED).

2271-72-M: NATIONAL SANITARY SUPPLY COMPANY OF WINDSOR (EMPLOYER) V. LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS', TEAMSTERS LOCAL 847 (TRADE UNION). (GRANTED).

JURISDICTIONAL DISPUTE

2207-72-JD: NORTHDOWN DRYWALL & CONSTRUCTION LIMITED (COMPLAINANT) V. THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562 THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))

DISPOSED OF DURING JULY

1422-71-M: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LIVINGSTON TRANSPORTATION LIMITED (RESPONDENT).

1819-72-M: CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 251 (APPLICANT) V. THE CORPORATION OF THE CITY OF OSHAWA (RESPONDENT).

1917-72-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 11 (APPLICANT) V. THE HYDRO ELECTRIC COMMISSION OF THE BOROUGH OF NORTH YORK (RESPONDENT).

REFERENCE TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)

1737-71-M: NORTH AMERICAN VALVE AND MANUFACTURING CORPORATION (FORMERLY PENFREW TOOL LTD.) (EMPLOYER) V. UNITED STEELWORKERS OF AMERICA (TRADE UNION).

[1972] 2 OLRB M.R. - PAGE 689.

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

1779-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. ATOMIK CONSTRUCTION COMPANY LIMITED (RESPONDENT). (REQUEST DENIED).

[1972] 2 OLRB M.R. - PAGE 723.

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - DISMISSED

113-70-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183
(APPLICANT) V. DOLENTE CONCRETE & DRAIN CO. (1969) (RESPONDENT). (RE-
QUEST DENIED).

2) OLRB REP.

PAGES 763 - 814

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ONTARIO

Monthly Report



ONTARIO LABOUR RELATIONS BOARD

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ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1972] OLRB REP.

CASES REPORTED

ALLBRIGHT PLATERS LTD. RE U.E. AND ALLBRIGHT PLATERS EMPLOYEE'S UNION.....	784
BEST FORM BRASSIERE CO. LTD. T.W.U.A., CLC, AFL-CIO AND GROUP OF EMPLOYEES.....	785
CONVALODGE NURSING HOME RE C.U.P.E.....	802
CORPORATION OF THE COUNTY OF MIDDLESEX RE C.U.P.E.....	801
DRUMMOND BUSINESS FORMS LTD. RE PRINTING SPECIALTIES AND PAPER PRODUCTS U., L. 466 AND GROUP OF EMPLOYEES.....	782
GENERAL IMPACT EXTRUSIONS (MFG) LTD., AND UAW L. 1408 RE PETER VERMIST AND ROMAN PRYBYTKIVSKY.....	798
KITCHENER WATER COMMISSION RE C.U.P.E.....	763
MARTEL, J. E., & SONS LUMBER LTD. RE I.W.A. AND GROUP OF EMPLOYEES.....	811
PATIDA SERVICES LTD. RE THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, L. 261, A.F.L.-C.I.O.-C.L.C.....	793
ROSEN, MICHAEL, REAL ESTATE LTD. RE O.P.E.I.U.....	766
SERVICE EMPLOYEES' U., L. 204 RE DOROTHE ELLENS.....	770
STEEL WORKERS, UNITED, L. 4912 RE PERCY WOODS.....	805
ZEHR'S MARKETS LTD. RE R.C.I.A. AND DIAMOND "Z" ASSOCIATION.....	796

INDEX OF CASES

BARGAINING UNITS - PRACTICE - REQUEST TO EXCLUDE 24 HOUR PERSONS AND STUDENTS - WHETHER BOARD WILL GRANT TWO UNITS - WHETHER NOTICE TO EMPLOYEES APPROPRIATE.

THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261, A.F.L.-C.I.O.-C.L.C. v. PATIDA SERVICES LTD..... 793

CERTIFICATION - PRACTICE - RESPONDENT GOING OUT OF EXISTENCE - WHETHER BOARD WILL EXAMINE CIRCUMSTANCES AT THE DATE OF THE MAKING OF THE APPLICATION - WHETHER BOARD WILL ENTERTAIN REPRESENTATIONS REGARDING EVENTS WHICH OCCUR SUBSEQUENTLY TO THE APPLICATION DATE AND WHICH DO NOT DIRECTLY RELATE TO CIRCUMSTANCES IN EXISTENCE AT THE APPLICATION DATE.

CANADIAN UNION OF PUBLIC EMPLOYEES v. KITCHENER WATER COM-
MISSION.....

763

CHARGES - PETITION - S7(4) - WHETHER TRUE WISHES OF EMPLOYEES
LIKELY TO BE DISCLOSED IN A REPRESENTATION VOTE - WHETHER
EMPLOYER EXCEEDED ITS RIGHTS TO EXPRESS ITS VIEWS -
WHETHER EMPLOYEES HAD ABILITY TO MAKE A FREE CHOICE.

TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO v. BEST FORM
BRASSIERE COMPANY LIMITED v. GROUP OF EMPLOYEES.....

785

DUTY OF FAIR REPRESENTATION - REFUSAL OF LABOUR RELATIONS BOARD
TO GRANT EMPLOYEE EXEMPTION ON BASIS OF RELIGIOUS BELIEF -
EMPLOYEE DISCHARGED FOR REFUSAL TO PAY UNION DUES-UNION
NOT INVOKING ARBITRATION PROCEDURE - RIGHT OF BARGAINING
AGENT TO SETTLE DISPUTES AND GRIEVANCES - EFFECT OF SECTION
60-UNION SECURITY CLAUSE AND EFFECT - WHETHER ERRONEOUS
INTERPRETATION OF COLLECTIVE AGREEMENT - WHETHER AFTER
DUE AND PROPER CONSIDERATION.

DOROTHE ELLENS v. SERVICE EMPLOYEES' UNION, LOCAL 204.....

770

DUTY OF FAIR REPRESENTATION - (S60) - REFUSAL TO PROCESS
GRIEVANCE - WHETHER ARBITRARY DISCRIMINATORY OR IN BAD
FAITH.

PERCY WOODS v. LOCAL 4912 OF THE UNITED STEEL WORKERS.....

805

DUTY OF FAIR REPRESENTATION - WHETHER MEMBER REQUIRED TO EXHAUST
INTERNAL UNION PROCEDURES BEFORE SEEKING RELIEF UNDER SECTION
60.

PETER VERMIST AND ROMAN PRYBYTKIVSKY v. UAW LOCAL 1408 AND
GENERAL IMPACT EXTRUSIONS (MFG) LTD.....

798

EMPLOYEE - SURVEY CHIEF - WHETHER EXERCISES MANAGERIAL FUNCTIONS.

CANADIAN UNION OF PUBLIC EMPLOYEES v. THE CORPORATION OF THE
COUNTY OF MIDDLESEX.....

801

EMPLOYEES - REAL ESTATE SALESMEN - WHETHER EMPLOYEES FOR THE
PURPOSES OF THE LABOUR RELATIONS ACT - REAL ESTATE AND
BUSINESS BROKERS ACT - EFFECT - SALESMEN RECEIVING COM-
MISSIONS - DAY TO DAY MANNER OF SELLING LEFT TO SALESMEN
- WHETHER EFFECTIVE CONTROL OVER SALESMEN EXERCISED -
WHETHER SALESMEN FREE AGENT.

OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION v.
MICHAEL ROSEN REAL ESTATE LIMITED.....

766

PETITION - CHARGES - S7(4) - WHETHER TRUE WISHES OF EMPLOYEES LIKELY TO BE DISCLOSED IN A REPRESENTATION VOTE - WHETHER EMPLOYER EXCEEDED ITS RIGHTS TO EXPRESS ITS VIEWS - WHETHER EMPLOYEES HAD ABILITY TO MAKE A FREE CHOICE.	
TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO v. BEST FORM BRASSIERE COMPANY LIMITED v. GROUP OF EMPLOYEES.....	785
PETITION - EMPLOYEE A REQUESTING EMPLOYEE B TO TYPE OUT STATEMENT OF DESIRE - A NOT CALLED TO GIVE EVIDENCE - WHETHER OBJEC- TORS ESTABLISHING ORIGINATION OF STATEMENT OF DESIRE.	
PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 v. DRUMMOND BUSINESS FORMS LIMITED v. GROUP OF EMPLOYEES....	782
PRACTICE - BARGAINING UNITS - REQUEST TO EXCLUDE 24 HOUR PERSONS AND STUDENTS - WHETHER BOARD WILL GRANT TWO UNITS - WHETHER NOTICE TO EMPLOYEES APPROPRIATE.	
THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261, A.F.L.-C.I.O.-C.L.C. v. PATIDA SERVICES LTD.....	793
PRACTICE - CERTIFICATION - RESPONDENT GOING OUT OF EXISTENCE - WHETHER BOARD WILL EXAMINE CIRCUMSTANCES AT THE DATE OF THE MAKING OF THE APPLICATION - WHETHER BOARD WILL ENTERTAIN REPRESENTATIONS REGARDING EVENTS WHICH OCCUR SUBSEQUENTLY TO THE APPLICATION DATE AND WHICH DO NOT DIRECTLY RELATE TO CIRCUMSTANCES IN EXISTENCE AT THE APPLICATION DATE.	
CANADIAN UNION OF PUBLIC EMPLOYEES v. KITCHENER WATER COM- MISSION.....	763
PRACTICE - WHETHER TRADE UNION AFFECTED BY APPLICATION-STATUS NOT CHALLENGED - WHETHER BOARD WILL PROHIBIT FURTHER PARTICIPATION BEFORE EXAMINER.	
RETAIL CLERKS INTERNATIONAL ASSOCIATION v. ZEHR'S MARKETS LIMITED v. DIAMOND "Z" ASSOCIATION.....	796
REPRESENTATION VOTE - WHETHER RESPONDENT FRUSTRATED PURPOSE AND INTENT OF REPRESENTATION VOTE - WHETHER UNDUE INFLUENCE - WHETHER BOARD WILL ORDER A NEW VOTE OR CERTIFY PERMIT TO SECTION 7(4).	
INTERNATIONAL WOODWORKERS OF AMERICA v. J. E. MARTEL & SONS LUMBER LIMITED v. GROUP OF EMPLOYEES.....	811

S79 - WHETHER REFUSAL TO EMPLOY RESULTED FROM TRADE UNION MEMBERSHIP.

THE CANADIAN UNION OF PUBLIC EMPLOYEES v. CONVALODGE NURSING HOME.....

802

TRADE UNION - PREVIOUSLY CERTIFIED - WHETHER ORGANIZATION OF EMPLOYEES - WHETHER DISSIPATED.

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) v. ALLBRIGHT PLATERS LIMITED v. ALLBRIGHT PLATERS EMPLOYEE'S UNION.....

784

THE EXISTENCE OF THE UNIT, OR TO STATE IT IN ANOTHER WAY, PRESUMES THE PRESENCE IN THE UNIT OF EMPLOYEES WHO MAY SIGNIFY WHETHER OR NOT THEY WISH THE BARGAINING AGENT CONCERNED TO CONTINUE TO REPRESENT THEM. IN THE PRESENT INSTANCE THAT CONDITION DOES NOT OBTAIN."

7. THE ABOVE-QUOTED PASSAGE HAS BEEN CONSISTENTLY APPLIED BY THE BOARD IN CIRCUMSTANCES ESSENTIALLY SIMILAR TO THOSE OF THE INSTANT CASE. IN THIS REGARD, SEE THE BLH-BERTRAM LTD. CASE, OLRB M.R. OCTOBER, 1967, P. 652; THE SCARBOROUGH PUBLIC LIBRARY BOARD CASE, OLRB M.R. MAY, 1968 AND THE TWO MORE RECENT BLH-BERTRAM LIMITED CASES, OLRB M.R. JANUARY, 1969, AT PAGES 1032 AND 1035 RESPECTIVELY.

8. FURTHER, WE CAN FIND NOTHING IN THE PRESENT LEGISLATION (THE LABOUR RELATIONS ACT, R.S.O., 1970, c. 232) WHICH COULD BE INTERPRETED AS RENDERING THE EFFECTS OF THE ABOVE-QUOTED PASSAGE INOPERATIVE AS OF THE DATE OF THE FILING OF THIS APPLICATION.

9. HAVING REGARD THEREFORE TO ALL OF THE CIRCUMSTANCES HEREIN AND TAKING INTO ACCOUNT THE PRINCIPLES ABOVE CITED, THIS APPLICATION IS ACCORDINGLY DISMISSED.

2205-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. KITCHENER WATER COMMISSION (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: W. A. ACTON AND W. F. BROWN FOR THE APPLICANT; E. L. MOORE, R. K. PEQUEGNAT, JOHN PAWLEY AND FRANK KOVRIG FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 1, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. AT THE HEARING OF THIS MATTER ON JULY 26, 1972, COUNSEL FOR THE RESPONDENT OPPOSED THIS APPLICATION ON THE BASIS THAT THE RESPONDENT WOULD BE GOING OUT OF EXISTENCE IN APPROXIMATELY FIVE MONTHS HENCE.

3. IN THIS REGARD, PARAGRAPH NO. 10 OF THE REPLY FILED BY THE RESPONDENT TO THIS APPLICATION PROVIDES AS FOLLOWS:

"THIS COMMISSION IS TO BE ABOLISHED DEC. 31, 1972 UNDER TERMS OF REGIONAL GOVERNMENT.

IT IS NOT KNOWN AT THIS DATE WHICH MEMBERS OF THE PROPOSED UNIT WILL BE OFFERED WORK WITH THE CITY (NOW A C.U.P.E. LOCAL) OR WITH THE REGION. IT APPEARS UNREASONABLE TO FORM A UNIT FOR LESS THAN SIX MONTHS WHEN UNION AFFILIATION WILL BE AUTOMATIC FOR NOT ONLY THIS GROUP, BUT FOR OUR CLERICAL, OFFICE AND TECHNICAL SECTIONS AS WELL ON JAN. 1, 1973."

4. COUNSEL FOR THE RESPONDENT FURTHER ALLUDED TO HIS LETTER TO THE BOARD DATED JUNE 11, 1972, WHICH IN SUPPLEMENTING THE SAID REPLY, PROVIDES AS FOLLOWS:

"EFFECTIVE JANUARY 1ST, 1973 THE RESPONDENT IS DISSOLVED BY SUB-SECTION (4) OF SECTION 178 OF THE REGIONAL MUNICIPALITY OF WATERLOO ACT, 1972, WHICH RECEIVED ROYAL ASSENT ON JUNE 30TH, 1972.

BY PART III OF THE SAME ACT PART OF THE FUNCTIONS OF THE RESPONDENT WILL BE TRANSFERRED TO THE CITY OF KITCHENER AND PART TO THE NEW REGIONAL MUNICIPALITY OF WATERLOO WHICH IS CREATED BY THE ACT. IT IS EXPECTED THAT WATERWORKS WILL IN EACH CASE BE A SUB-DEPARTMENT OF A PUBLIC WORKS DEPARTMENT.

SECTION 27 OF THE ACT MAKES BROAD PROVISION FOR CONTINUANCE OF EMPLOYMENT AND BENEFITS.

TO SUM UP;

- (1) THE BARGAINING UNIT PROPOSED WILL NOT EXIST AFTER JANUARY 1ST, 1973, AND ITS MEMBERS WILL BE DIVIDED AMONG TWO EMPLOYERS;
- (2) THE STAFF OF THE TWO NEW EMPLOYERS WILL BE DERIVED FROM SEVERAL SOURCES, AND ESPECIALLY IN THE CASE OF THE REGIONAL MUNICIPALITY THE MEMBERS OF THIS PROPOSED UNIT MAY NOT BE A MAJORITY, EVEN IF, AS IS NOT EXPECTED, THE WATERWORKS FORMS A SEPARATE DEPARTMENT;

IT IS THEREFORE SUBMITTED THAT THE UNIT PROPOSED IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING AT THIS TIME."

5. ASIDE FROM THE QUESTION OF BUILD-UP, IT HAS BEEN THE CON-

SISTENT POLICY OF THIS BOARD TO EXAMINE THE CIRCUMSTANCES IN EXISTENCE AS OF THE DATE OF THE FILING OF THE APPLICATION. IN OTHER WORDS, THE BOARD HAS REFUSED TO ENTERTAIN REPRESENTATIONS REGARDING EVENTS WHICH OCCUR SUBSEQUENTLY TO THE APPLICATION DATE AND WHICH DO NOT DIRECTLY RELATE TO CIRCUMSTANCES IN EXISTENCE AT THE APPLICATION DATE. IN THIS REGARD, WE FIND THE PRINCIPLE AS QUOTED IN THE TORONTO DINING CLUB LIMITED CASE OLRB M.R. APRIL 1964, P. 33, IS RELEVANT, WHEREIN THE BOARD AT PAGE 34 STATED:

"...THE QUESTION WHETHER CERTIFICATION WILL, IN A PARTICULAR CASE, BE OF BENEFIT TO THE EMPLOYEES AFFECTED OR WILL POSE DIFFICULT PROBLEMS FOR THE PARTIES CONCERNED IS NOT ONE FOR CONSIDERATION BY THE BOARD. AN APPLICANT WHICH MEETS THE NECESSARY REQUIREMENTS IS ENTITLED TO CERTIFICATION FOR WHAT IT IS WORTH. IT IS NOT THE FUNCTION OF THE BOARD TO ENDEAVOUR TO ESTIMATE THE PROBABLE FUTURE VALUE OF CERTIFICATION."

6. FURTHER, SECTION 7(1) OF THE LABOUR RELATIONS ACT, PROVIDES THAT:

"UPON AN APPLICATION FOR CERTIFICATION, THE BOARD SHALL ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE AND THE NUMBER OF EMPLOYEES IN THE UNIT WHO WERE MEMBERS OF THE TRADE UNION AT SUCH TIME AS IS DETERMINED UNDER CLAUSE J OF SUBSECTION 2 OF SECTION 92."

(EMPHASIS ADDED)

7. HAVING REGARD TO THE PRINCIPLES AND LEGISLATION AS DEFINED ABOVE, WE ARE NOT PREPARED TO TAKE INTO ACCOUNT CIRCUMSTANCES WHICH MAY COME INTO EFFECT SUBSEQUENT TO THE TIME OF THE FILING AND HEARING OF THIS APPLICATION. THE REQUEST OF COUNSEL IN THIS REGARD IS ACCORDINGLY DENIED.

8. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STUDENTS EMPLOYED ON A CO-OPERATIVE TRAINING BASIS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. THE APPLICANT HAS CHALLENGED THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. IN THESE CIRCUMSTANCES, MR. D. K. AYNLEY, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT BACK TO THE BOARD ON;

- (A) THE SAID LIST OF EMPLOYEES FILED BY THE RESPONDENT;
- (B) THE DUTIES AND RESPONSIBILITIES OF THOSE PERSONS CLASSIFIED BY THE RESPONDENT AS "METER READERS".

1482-71-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. MICHAEL ROSEN REAL ESTATE LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: A. E. GOLDEN AND W. PEEL FOR THE APPLICANT; JOHN G. PARKINSON FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 2, 1972.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE RESPONDENT RAISED THE ISSUE AS TO WHETHER PERSONS CLASSIFIED AS REAL ESTATE SALESMEN ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE LABOUR RELATIONS ACT. THE EVIDENCE ESTABLISHED THAT THE RESPONDENT IS A REAL ESTATE BROKER WHOSE BUSINESS IS CARRIED ON THROUGH REGISTERED REAL ESTATE SALESMEN. THE SALESMEN, WHO ARE CLAIMED BY THE APPLICANT TO BE APPROPRIATE FOR COLLECTIVE BARGAINING, MUST OPERATE PURSUANT TO THE RESTRICTIONS CONTAINED IN THE REAL ESTATE AND BUSINESS BROKERS ACT, R.S.O. 1970, CHAPTER 401, AND AMENDMENTS THERETO, AND REGULATION 769 R.R.O. 1970, AS AMENDED.

2. UNDER THE REAL ESTATE AND BUSINESS BROKERS ACT BROKER IS DEFINED AS:

1. IN THIS ACT,

- (A) "BROKER" MEANS A PERSON WHO, FOR ANOTHER OR OTHERS, FOR COMPENSATION, GAIN OR REWARD OR HOPE OR PROMISE THEREOF, EITHER ALONE OR THROUGH ONE OR MORE OFFICIALS OR SALESMEN, TRADES IN REAL ESTATE, OR A PERSON WHO HOLDS HIMSELF OUT AS SUCH;

SALESMAN IS DEFINED AS:

1. IN THIS ACT,

- (1) "SALESMAN" MEANS A PERSON EMPLOYED, APPOINTED OR AUTHORIZED BY A BROKER TO TRADE IN REAL ESTATE;

OTHER PROVISIONS OF THE ACT READ AS FOLLOWS:

3.--(1) NO PERSON SHALL,

- (B) TRADE IN REAL ESTATE AS A SALESMAN UNLESS HE IS REGISTERED AS A SALESMAN OF A REGISTERED BROKER;

4.--(2) EACH BRANCH OFFICE SHALL BE UNDER THE SUPERVISION OF A REGISTERED BROKER AND EACH BRANCH OFFICE HAVING MORE THAN ONE REGISTERED SALESMAN SHALL BE UNDER DIRECT MANAGEMENT BY A REGISTERED BROKER OR BY A SALESMAN WHO HAS BEEN REGISTERED FOR AT LEAST TWO YEARS AND WHO IS UNDER THE SUPERVISION OF A REGISTERED BROKER.

6.--(1) AN APPLICANT IS ENTITLED TO REGISTRATION OR RENEWAL OF REGISTRATION EXCEPT WHERE,

- (B) THE APPLICATION IS FOR REGISTRATION AS A SALESMAN AND THE APPLICANT IS NOT EMPLOYED, APPOINTED OR AUTHORIZED BY A BROKER TO TRADE IN REAL ESTATE ON HIS BEHALF; OR

39. EVERY BROKER SHALL, WHEN ADVERTISING TO PURCHASE, SELL, EXCHANGE, OR LEASE REAL ESTATE, CLEARLY INDICATE HIS OWN NAME AS BEING THE PARTY ADVERTISING AND THAT HE IS A BROKER, AND ANY REFERENCE TO THE NAME OF A SALESMAN IN THE ADVERTISEMENT SHALL CLEARLY INDICATE THE BROKER AS BEING THE EMPLOYER OF THE SALESMAN.

40. NO BROKER SHALL,

- (A) EMPLOY OR ENGAGED THE SALESMAN OF ANOTHER BROKER TO TRADE IN REAL ESTATE OR PERMIT SUCH SALESMAN TO ACT ON HIS BEHALF;
- (B) EMPLOY OR ENGAGE AN UNREGISTERED PERSON TO TRADE IN REAL ESTATE OR PERMIT SUCH PERSON TO ACT ON HIS BEHALF; OR

41. NO SALESMAN SHALL TRADE IN REAL ESTATE ON BEHALF OF ANY BROKER OTHER THAN THE BROKER WHO, ACCORDING TO THE RECORDS OF THE REGISTRAR, IS HIS EMPLOYER, AND NO SALESMAN IS ENTITLED TO OR SHALL ACCEPT ANY COMMISSION OR OTHER REMUNERATION FOR TRADING IN REAL ESTATE FROM ANY PERSON EXCEPT THE BROKER WHO IS REGISTERED AS HIS EMPLOYER.

42.--(1) NO BROKER OR SALESMAN SHALL PURCHASE, LEASE, EXCHANGE OR OTHERWISE ACQUIRE FOR HIMSELF OR MAKE AN OFFER TO PURCHASE, LEASE, EXCHANGE OR OTHERWISE ACQUIRE FOR HIMSELF, EITHER DIRECTLY OR INDIRECTLY, ANY INTEREST IN REAL ESTATE FOR THE PURPOSE OF RESALE UNLESS HE FIRST DELIVERS TO THE VENDOR A WRITTEN STATEMENT THAT HE IS A BROKER OR SALESMAN, AS THE CASE MAY BE, AND THE VENDOR HAS ACKNOWLEDGED IN WRITING THAT HE HAS RECEIVED THE STATEMENT.

(2) WHERE REAL ESTATE IN RESPECT OF WHICH A BROKER OR SALESMAN IS REQUIRED TO GIVE A STATEMENT UNDER SUBSECTION 1 IS LISTED WITH THE BROKER OR, IN THE CASE OF A SALESMAN, IS LISTED WITH THE BROKER BY WHOM THE SALESMAN IS EMPLOYED, APPOINTED OR AUTHORIZED TO TRADE IN REAL ESTATE, THE STATEMENT SHALL INCLUDE, ...

3. THE REGULATIONS AND FORMS CONTAINED IN REGULATION 769, R.R.O. 1970, ALSO CLEARLY CONTEMPLATE THAT SALESMEN REGISTERED UNDER A BROKER ARE EMPLOYED BY THE BROKER. THE "CERTIFICATE OF EMPLOYER" FORMING PART OF FORM 3, SALESMAN'S APPLICATION, STATES:

CERTIFICATE OF EMPLOYER

TO THE REGISTRAR:

I, HEREBY CERTIFY
(NAME OF INTENDED EMPLOYER)

THAT THE INFORMATION GIVEN BY
(NAME OF APPLICANT)

IN THE FOREGOING APPLICATION IS TO THE BEST OF MY KNOWLEDGE AND BELIEF TRUE, AND REQUEST THAT THE APPLICATION BE GRANTED. I FURTHER CERTIFY THAT I WILL NOT EMPLOY THE APPLICANT UNTIL I IN FACT RECEIVE HIS REGISTRATION CERTIFICATE.

THE ANNUAL RETURN SUBMITTED BY A BROKER (FORM 4) READS IN PART--"PRESENTLY EMPLOYED SALESMEN WHOSE REGISTRATIONS ARE TO BE MAINTAINED". IN ADDITION, OTHER REFERENCES ARE MADE TO THE EMPLOYMENT OF SALESMEN IN THE ANNUAL RETURN.

4. NOTICE OF CHANGE IN SALESMAN'S CERTIFICATE OR REQUEST FOR DUPLICATE CERTIFICATE (FORM 5) READS IN PART AS FOLLOWS:

NAME OF FORMER BROKER EMPLOYER

NAME OF NEW BROKER EMPLOYER

5. THE EVIDENCE CONTAINED IN THE AGREED STATEMENT OF FACTS DATED MAY 19, 1972 ALSO REVEALS THAT:

A SALESMAN CANNOT:

- (A) DEAL OR TRADE IN REAL ESTATE UNLESS HE HAS BEEN REGISTERED UNDER THE ACT WITH A REGISTERED BROKER PURSUANT TO THE ACT;
- (B) LIST ANY PROPERTIES FOR SALE OR OTHERWISE EXCEPT IN SUCH BROKER'S NAME;
- (C) HOLD ANY TRUST MONIES PURSUANT TO THE ACT; AND
- (D) ACCEPT THE PAYMENT OF COMMISSION OTHER THAN FROM HIS REGISTERED BROKER.

6. A SALESMAN IS RESTRICTED TO WORKING FOR ONE BROKER AT A TIME AND IS NOT FREE TO HOLD HIMSELF OUT TO THE PUBLIC IN ANY OTHER MANNER THAN AS A SALESMAN FOR THAT BROKER. THE SALESMAN RECEIVES NO SET SALARY OR WAGES BUT IS PAID A SHARE OF THE COMMISSIONS EARNED BY THE BROKER AS A RESULT OF SALES OR LISTINGS IN WHICH HE PARTICIPATES. WHILE THE SALESMAN'S DAY-TO-DAY MANNER OF SELLING IS LEFT ALMOST ENTIRELY TO THE DISCRETION OF THE SALESMAN, INCLUDING THE HOURS WORKED, THE BROKER EXERCISES CONTROL OVER THE SALESMAN'S CONDUCT IN SO FAR AS IT MIGHT REFLECT ON THE BROKER AND HIS BUSINESS. THE ONLY DEDUCTIONS MADE FROM THE COMMISSIONS EARNED BY THE SALESMAN ARE FOR UNEMPLOYMENT INSURANCE, CANADA PENSION PLAN, ANNUAL TORONTO REAL ESTATE BOARD MEMBERSHIP FEE (IF NOT PAID BY SALESMAN) AND ANNUAL LICENCE FEE FOR REGISTRATION (IF NOT PAID BY SALESMAN), MULTIPLE LISTING SERVICE FEE AND OTHER EXPENSES INCURRED BY THE SALESMAN. NO DEDUCTION IS MADE FOR INCOME TAX BY THE BROKER. THE BROKER HAS HELD SALES MEETINGS IN ORDER TO UPGRADE THE QUALITY AND QUANTITY OF THE WORK OF THE SALESMEN. THE SALESMEN PROVIDE THEIR OWN CAR AND ARE NOT ALLOWED ANY EXPENSES FOR ITS OPERATION. THE PARTIES AGREE THAT "THE RESPONDENT MAY TERMINATE A SALESMAN UNILATERALLY WITHIN THE RESPONDENT'S DISCRETION FOR ANY REASON INCLUDING THE FAILURE TO PRODUCE SALES AT A REASONABLE LEVEL".

7. HAVING CONSIDERED THE ABOVE EVIDENCE TOGETHER WITH THE OTHER EVIDENCE CONTAINED IN THE AGREED STATEMENT OF FACTS, WE FIND THAT THE REAL ESTATE AND BUSINESS BROKERS ACT REQUIRES SALESMEN WHO ARE NOT BROKERS OR OFFICIALS OF A CORPORATE BROKER TO BE EMPLOYEES OF THE BROKER THROUGH WHOM THE SALESMEN ARE REGISTERED. THE REAL ESTATE AND BUSINESS BROKERS ACT PLACES STRINGENT CONTROLS ON THE OPERATION OF A SALESMAN AND A BROKER. THESE RESTRICTIONS INCLUDE THE REQUIREMENT THAT THE SALESMEN WITH WHOM WE ARE HERE CONCERNED BE EMPLOYEES OF THE RESPONDENT. WHILE VERY LITTLE CONTROL IS EXERCISED IN THE METHOD IN WHICH A SALESMAN EFFECTS SALES OF PROPERTIES AND THE HOURS WORKED BY THE SALESMAN ARE LEFT PRETTY MUCH TO HIS SOLE DISCRETION, THE RESPON-

DENT HAS EFFECTIVE CONTROL OVER HIS OPERATIONS DUE TO THE FACT THAT ANY SALESMAN WHO DOES NOT SELL, DOES NOT EARN AND INDEED MIGHT EVEN BE TERMINATED.

8. REAL ESTATE SALESMEN ARE NOT ENTREPRENEURS IN BUSINESS FOR THEMSELVES. SALESMEN ARE AN ESSENTIAL AND INTEGRAL PART OF THE BUSINESS CARRIED BY BY THE BROKER. IT IS THE BROKER'S BUSINESS RATHER THAN THE SALESMAN'S BUSINESS AND THE SALESMEN ARE EMPLOYED FOR THE PURPOSE OF GIVING EFFECT AND SUBSTANCE TO THE BUSINESS CARRIED ON BY THE BROKER. THE SALESMEN CANNOT CONTRACT THEMSELVES OUT FROM UNDER THE REAL ESTATE AND BUSINESS BROKERS ACT AND SINCE THE BROKER AND THE SALESMEN ARE REQUIRED TO HOLD THE SALESMEN OUT TO THE PUBLIC AS EMPLOYEES OF THE BROKER FOR THE PURPOSES OF THE REAL ESTATE AND BUSINESS BROKERS ACT, WE ARE OF THE VIEW THAT THERE ALSO IS AN EMPLOYMENT RELATIONSHIP FOR THE PURPOSES OF THE LABOUR RELATIONS ACT.

9. AT ANY GIVEN TIME THE SALESMAN IS NOT A FREE AGENT BUT IS UNDER THE EFFECTIVE CONTROL OF THE BROKER WITH WHOM HE IS REGISTERED AS A SALESMAN AND ALL HIS SALES EFFORTS MUST BE DIRECTED FOR AND ON BEHALF OF THE BROKER. A SALESMAN IS NOT ABLE TO HOLD HIMSELF OUT TO THE PUBLIC AS BEING ABLE TO LIST AND SELL REAL ESTATE EXCEPT FOR AND ON BEHALF OF A BROKER. SUCH CONTROL IS CONSISTENT ONLY WITH AN EMPLOYER-EMPLOYEE RELATIONSHIP.

10. WE THEREFORE FIND ON ALL THE EVIDENCE FOR THE REASONS SET OUT ABOVE AND FOR THE REASONS ENUNCIATED BY THE BOARD IN THE ERB TRANSPORT LIMITED CASE [1972] OLRB REP. 388 THAT PERSONS CLASSIFIED BY THE RESPONDENT AS SALESMEN ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT AND ARE THEREFORE ELIGIBLE FOR COLLECTIVE BARGAINING.

11. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

12. THE BOARD DIRECTS THAT THE REGISTRAR CAUSE ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER TO BE COUNTED AND REPORT TO THE BOARD.

1799-71-U: DOROTHE ELLENS (COMPLAINANT) V. SERVICE EMPLOYEES' UNION, LOCAL 204 (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: WM. R. HERRIDGE, Q.C. AND G. VANDEZANDE FOR THE COMPLAINANT; B. A. DUNN AND WARD THOMPSON FOR THE RESPONDENT.

DECISION OF THE BOARD:

AUGUST 2, 1972.

1. THE NAME "SERVICE EMPLOYEES' UNION LOCAL 204" APPEARING IN THE STYLE OF CAUSE OF THIS COMPLAINT AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "SERVICE EMPLOYEES' UNION, LOCAL 204".
2. THE COMPLAINANT ALLEGES THAT SHE HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 60 OF THE LABOUR RELATIONS ACT. SECTION 60 PROVIDES AS FOLLOWS:

"A TRADE UNION OR COUNCIL OF TRADE UNIONS, SO LONG AS IT CONTINUES TO BE ENTITLED TO REPRESENT EMPLOYEES IN A BARGAINING UNIT, SHALL NOT ACT IN A MANNER THAT IS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH IN THE REPRESENTATION OF ANY OF THE EMPLOYEES IN THE UNIT, WHETHER OR NOT MEMBERS OF THE TRADE UNION OR OF ANY CONSTITUENT UNION OF THE COUNCIL OF TRADE UNIONS, AS THE CASE MAY BE."
3. THE COMPLAINANT, WHO WAS EMPLOYED BY THE ST. CATHARINES GENERAL HOSPITAL (HEREINAFTER CALLED THE "HOSPITAL"), MADE AN APPLICATION TO THE BOARD FOR RELIEF UNDER SECTION 39 OF THE ACT FOR EXEMPTION FROM THE PAYMENT OF UNION DUES ON THE GROUNDS OF HER RELIGIOUS CONVICTIONS OR BELIEFS. THE RESPONDENT DID NOT OPPOSE THE APPLICATION. ON DECEMBER 13, 1971, THE BOARD DISMISSED THE APPLICATION FOR THE SOLE REASON THAT THE BOARD WAS WITHOUT JURISDICTION TO DEAL WITH THE MATTER BECAUSE THE COMPLAINANT COMMENCED TO WORK WITH THE ST. CATHARINES GENERAL HOSPITAL AFTER THE TIME LIMITED BY THE ACT.
4. THE COMPLAINANT WROTE TO THE RESPONDENT, FOLLOWING RECEIPT OF THE DECISION OF THE BOARD, EXPRESSING THE HOPE THAT SHE WOULD BE ABLE TO CONTINUE WORKING AT THE HOSPITAL AND PAY THE EQUIVALENT OF UNION DUES TO A CHARITY INSTEAD OF TO A UNION. SHE RECEIVED A REPLY FROM THE UNION BY LETTER DATED DECEMBER 31, 1971. THE LETTER COMMENDS THE COMPLAINANT FOR HER CONVICTIONS AND RELIGIOUS BELIEFS AND GOES ON TO SAY THE FOLLOWING:

"I REGRET TO INFORM YOU THAT IT IS THE POLICY OF THIS ORGANIZATION SINCE THE INTRODUCTION OF BILL 167, THAT WE WILL NOT OPPOSE AN APPLICATION, AS WE DID NOT OPPOSE YOUR APPLICATION ON THE GROUNDS OF THE RELIGIOUS OBJECTION CLAUSE UNDER BILL 167. HOWEVER, SINCE THE BOARD HAVE SEEN FIT TO DISMISS YOUR APPLICATION, WE AS AN ORGANIZATION HAVE NO ALTERNATIVE, BUT TO ENFORCE THE TERMS OF THE COLLECTIVE AGREEMENT, NAMELY ALL EMPLOYEES AT THE ST. CATHARINES GENERAL HOSPITAL WILL PAY DUES AS A CONDITION OF EMPLOYMENT, AND FURTHER WE ARE NOT PREPARED TO EXEMPT THOSE DUES PAYMENTS, NOR TO DIRECT THEM TO CHARITIES UNLESS SO ORDERED BY THE ONTARIO LABOUR RELATIONS BOARD."

5. BY LETTER DATED JANUARY 7, 1972, THE COMPLAINANT WAS ADVISED BY THE DIRECTOR OF PERSONNEL FOR THE HOSPITAL THAT THE UNION HAD ASKED FOR HER TERMINATION. THE LETTER STATED THAT THE COMPLAINANT'S LAST DAY OF WORK WOULD BE FRIDAY, JANUARY 21, 1972. SHE WAS REQUESTED TO ATTEND THE OFFICE OF THE DIRECTOR OF PERSONNEL TO RECEIVE HER FINAL DOCUMENTS.

6. THE COMPLAINANT'S SOLICITORS WROTE TO THE HOSPITAL ON JANUARY 18, 1972. THE LETTER SETS FORTH THE SOLICITOR'S VIEWS ON THE RELEVANT SECTIONS OF THE COLLECTIVE AGREEMENT IN FORCE BETWEEN THE RESPONDENT AND THE HOSPITAL AND REQUESTS WITHDRAWAL OF THE NOTICE OF TERMINATION AND THE CONTINUED EMPLOYMENT OF THE COMPLAINANT.

7. ON THE SAME DATE, NAMELY JANUARY 18, 1972, THE RESPONDENT, IN REPLY TO A FURTHER REQUEST FOR CONSIDERATION MADE BY THE COMPLAINANT, BY LETTER DATED JANUARY 14, 1972, WROTE TO THE COMPLAINANT. THE RELEVANT PORTIONS OF THAT LETTER READ AS FOLLOWS:

"THE ENTIRE MATTER OF DUES EXEMPTION UNDER THIS SPECIFIC SECTION OF THE LABOUR RELATIONS ACT, WAS CAREFULLY REVIEWED BY OUR EXECUTIVE BOARD AT THEIR LAST REGULAR MEETING.

THE DECISION OF THE BOARD WAS, THAT WE WOULD NOT OPPOSE AN APPLICATION BEFORE THE BOARD. HOWEVER, IF THE BOARD RULED THAT THE PERSON WAS NOT EXEMPT, WE WOULD MAKE NO FURTHER EXCEPTIONS, AND WE WOULD HAVE TO ENFORCE THE TERMS OF THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN OUR UNION AND THE EMPLOYER.

SINCE YOUR CASE FALLS IN THE LATTER CATEGORY, WE MUST ADVISE YOU THAT YOU EITHER PAY DUES IMMEDIATELY, OR WE WOULD HAVE NO ALTERNATIVE BUT TO SEEK YOUR TERMINATION OF EMPLOYMENT AT THE HOSPITAL.

I WOULD REMIND YOU THAT YOU STARTED EMPLOYMENT IN FEBRUARY OF 1971, AND SHOULD HAVE STARTED PAYING DUES IN JUNE OF 1971, WHICH IS NOW 8 MONTHS, SO THAT IN REALITY YOU HAVE REALLY BEEN EXEMPTED FOR \$35.00 ALREADY, WHICH WE WOULD TRUST IN YOUR CONSCIENCE YOU WOULD PAY OVER TO SOME CHARITY.

IF WE HAVE TO ENFORCE THE DUES PAYMENT AT THE HOSPITAL, WE WILL MAKE EVERY REASONABLE EFFORT TO ENFORCE IT RETROACTIVE TO JUNE OF 1971."

8. ON JANUARY 21, 1972, THE COMPLAINANT FILED A GRIEVANCE ALLEGING THAT UNDER THE TERMS OF THE COLLECTIVE AGREEMENT, THE HOSPITAL HAD NO RIGHT TO DISCHARGE HER. THIS WAS FOLLOWED BY A MORE FORMAL TYPEWRITTEN GRIEVANCE IN THE FOLLOWING LANGUAGE:

"JANUARY 24TH, 1972.

R. R. #1,
NIAGARA-ON-THE-LAKE,
ONTARIO.

THE ST. CATHARINES GENERAL HOSPITAL,
ST. CATHARINES,
ONTARIO.

ATTENTION: DIRECTOR OF PERSONNEL

DEAR SIR:

GRIEVANCE

I WISH TO FILE A GRIEVANCE WITH RESPECT TO MY DISMISSAL AS AN EMPLOYEE OF THE HOSPITAL ON FRIDAY, JANUARY 21ST, 1972.

I DO NOT BELIEVE THAT THE HOSPITAL HAS ANY RIGHT TO DISCHARGE ME OR IS UNDER ANY OBLIGATION TO DISCHARGE ME UNDER THE TERMS OF THE COLLECTIVE AGREEMENT BETWEEN THE HOSPITAL AND SERVICE EMPLOYEES' UNION LOCAL 204. I AM WILLING AND ABLE TO WORK IN MY EMPLOYMENT AS A REGISTERED NURSING ASSISTANT.

I UNDERSTAND THE HOSPITAL DISCHARGED ME DUE TO MY REFUSAL TO PAY MONTHLY DUES TO THE SERVICE EMPLOYEES' UNION LOCAL 204 AND MY REFUSAL TO AUTHORIZE SUCH DEDUCTIONS. AS THE HOSPITAL KNOWS, MY RELIGIOUS CONVICTIONS ARE SUCH THAT I CANNOT SUPPORT OR PAY DUES TO THE SERVICE EMPLOYEES' UNION, WHICH DOES NOT RECOGNIZE JESUS CHRIST AND DOES NOT IN ITS CONSTITUTION HOLD THE PRINCIPLES OF THE BIBLE AS ITS FOUNDATION.

I HAVE HAD NO LEGAL TRAINING AND I ASK THAT IF THE HOSPITAL CONTINUES TO INSIST UPON MY DISCHARGE, THAT I BE ALLOWED TO HAVE PROFESSIONAL ASSISTANCE AT ALL STAGES OF THE GRIEVANCE PROCEDURE IN ORDER THAT PROPER ARGUMENTS MAY BE PUT ON MY BEHALF.

I FURTHER ASK THAT I AND MY PROFESSIONAL ADVISER BE ALLOWED TO BE PRESENT AT THE SPECIAL MEETING WITH THE UNION COMMITTEE UNDER ARTICLE 10.01 OF THE COLLECTIVE AGREEMENT.

YOURS VERY TRULY,

(SIGNED) DOROTHE ELLENS

C.C. SUPERVISOR"

9. THIS WAS FOLLOWED BY A REQUEST MADE TO THE HOSPITAL BY THE COMPLAINANT'S SOLICITORS ON FEBRUARY 1, 1972 REQUESTING THAT THE GRIEVANCE BE PLACED ON THE AGENDA FOR THE NEXT REGULAR MONTHLY MEETING BETWEEN THE GRIEVANCE COMMITTEE AND MANAGEMENT. THE LETTER THEN SET FORTH THE FACTS RELIED UPON BY THE COMPLAINANT AND THE SECTIONS OF THE AGREEMENT SAID TO BE INVOLVED. THE LETTER PARTICULARLY REQUESTED THAT THE COMPLAINANT BE PERMITTED TO ATTEND THE MEETING ACCOMPANIED BY HER PROFESSIONAL ADVISORS. THE LETTER STATES, IN PART, AS FOLLOWS:

"MANAGEMENT JUSTIFIES THE DISMISSAL OF MISS ELLENS BE REFERENCE TO ARTICLE 4.01 OF THE COLLECTIVE AGREEMENT. IT IS MISS ELLENS' POSITION THAT ARTICLE 4.01 OF THE COLLECTIVE AGREEMENT DOES NOT CONFER UPON THE HOSPITAL THE RIGHT, NOR DOES IT IMPOSE UPON THE HOSPITAL THE OBLIGATION, TO DISCHARGE AN EMPLOYEE WHO FAILS TO AUTHORIZE THE DEDUCTION OF UNION DUES."

10. THE ABOVE REQUEST WAS GRANTED AND THE COMPLAINANT ATTENDED THE MEETING WHICH WAS HELD ON FEBRUARY 24, 1972. THE MEETING WAS ATTENDED BY THE COMPLAINANT WITH HER COUNSEL, MR. W. R. HERRIDGE, Q.C. AND MR. GERALD VANDEZANDE. THERE APPEARED FOR THE UNION MR. BRIAN DUNN, COUNSEL, ITS BUSINESS AGENT, CHIEF SHOP STEWARD AND ZONE SHOP STEWARD. ON BEHALF OF THE HOSPITAL THERE APPEARED ITS COUNSELS MR. SHARMAN K. LEARIE, Q.C. AND MR. RONALD GREENSPAN, TOGETHER WITH THE EXECUTIVE DIRECTOR, DIRECTOR OF PERSONNEL AND MR. A. B. CAMERON, CONSULTANT.

11. THE PARTIES AGREED THAT THE MEETING WAS PROPERLY CONSTITUTED AS REQUIRED BY STEP 3 OF THE COLLECTIVE AGREEMENT.

12. IT WAS AGREED AT THE HEARING THAT AT THE COMMENCEMENT OF THE MEETING, MR. HERRIDGE CALLED UPON MR. DUNN TO REPRESENT THE COMPLAINANT. MR. DUNN SUGGESTED THAT IT WAS MISS ELLENS' GRIEVANCE, THAT SHE HAD NOT COME TO THE UNION WITH THE GRIEVANCE BEFORE THE MEETING AND THAT SHE WAS REPRESENTED BY HER OWN COUNSEL. HE TOOK THE POSITION THAT NO BREACH OF THE COLLECTIVE AGREEMENT HAD OCCURRED AND THAT THEREFORE THERE WAS NOTHING TO SUPPORT THE GRIEVANCE.

13. THE REPLY OF THE HOSPITAL, FOLLOWING THE MEETING, IS CONTAINED IN A LETTER ADDRESSED BY IT TO MR. HERRIDGE ON MARCH 3, 1972, WHICH READS, IN PART, AS FOLLOWS:

"AFTER SERIOUS CONSIDERATION OF THE REPRESENTATION-

TATIONS OF THE PARTIES, OF ALL THE CIRCUMSTANCES OF THE GRIEVANCE OF MISS D. ELLENS, AND IN PARTICULAR OF THE DECISION OF THE ONTARIO LABOUR RELATIONS BOARD TO DISMISS THE APPLICATION OF MISS D. ELLENS PURSUANT TO SECTION 39 OF THE LABOUR RELATIONS ACT FOR EXEMPTION ON THE GROUNDS OF RELIGIOUS CONVICTION OR BELIEF FROM THE UNION SECURITY PROVISIONS IN THE COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE UNION AND EMPLOYER; AND THE REQUEST OF THE UNION TO DISMISS MISS D. ELLENS AS A RESULT OF HER REFUSAL TO SIGN A CARD AUTHORIZING THE DEDUCTION OF UNION DUES AS IS MANDATORY UNDER ARTICLE 4 OF THE CURRENT COLLECTIVE AGREEMENT, IT IS THE DECISION OF THE HOSPITAL, THAT THE GRIEVANCE OF MISS D. ELLENS SHOULD NOT BE GRANTED."

ARTICLE 4 OF THE COLLECTIVE AGREEMENT READS AS FOLLOWS:

ARTICLE 4 - DEDUCTION OF DUES

4.01 THE EMPLOYER SHALL DEDUCT FROM THE FIRST PAY IN EACH MONTH OF

- (A) A PRESENT EMPLOYEE; AND
- (B) A FUTURE EMPLOYEE AFTER THIRTY (30) DAYS' SERVICE

SUCH MONTHLY DUES AS ARE UNIFORMLY LEVIED UPON ALL MEMBERS OF THE UNION IN ACCORDANCE WITH ITS CONSTITUTION AND BY-LAWS. THE AMOUNT OF SUCH DUES SHALL BE CERTIFIED TO THE EMPLOYER BY THE SECRETARY TREASURER OF THE UNION. EACH EMPLOYEE SHALL AUTHORIZE THE EMPLOYER IN WRITING TO MAKE SUCH DEDUCTIONS IN A FORM APPROVED BY THE EMPLOYER. THE DUES SO DEDUCTED SHALL BE TURNED OVER BY THE EMPLOYER TO THE SECRETARY TREASURER OF THE UNION WITHIN 15 DAYS AFTER DEDUCTION IS MADE AND BEFORE THE END OF THE CURRENT MONTH FOR WHICH DEDUCTION WAS MADE.

4.02 (A) IT IS MUTUALLY AGREED THAT A UNION REPRESENTATIVE SHALL BE GIVEN THE OPPORTUNITY OF INTERVIEWING EACH NEW EMPLOYEE ONCE UPON THE COMPLETION OF THEIR PROBATIONARY PERIOD FOR THE PURPOSE OF INFORMING SUCH EMPLOYEE OF THE EXISTENCE OF THE UNION IN THE HOSPITAL, AND PRESENTING SUCH EMPLOYEE WITH A COPY OF THE UNION AGREEMENT.

(B) THE EMPLOYER SHALL SEND EACH MONTH (ADDRESSED TO THE UNION OFFICE) ALL NAMES OF THE PERSONS TO BE INTERVIEWED AND SHALL DESIGNATE THE TIME AND PLACE FOR EACH INTERVIEW, THE DURATION OF WHICH SHALL NOT EXCEED TEN MINUTES. THE INTERVIEW SHALL TAKE PLACE ON THE EMPLOYER'S PREMISES IN A ROOM DESIGNATED BY THE EMPLOYER, AND THE EMPLOYEE SHALL, AS A CONDITION OF EMPLOYMENT, REPORT TO THIS ROOM FOR INTERVIEW DURING THE INTERVIEW PERIOD UNLESS SICK OR ON DAY OFF, IN WHICH CASE OTHER ARRANGEMENTS WILL BE MADE BY THE UNION.

14. BY LETTER DATED MARCH 6, 1972 FROM MR. HERRIDGE TO MR. DUNN, A REQUEST WAS MADE TO THE RESPONDENT TO INITIATE ARBITRATION PROCEEDINGS. MR. DUNN REPLIED IN A LETTER ALSO DATED MARCH 6, 1972 AS FOLLOWS:

"YOU WILL NO DOUBT HAVE RECEIVED A COPY OF THE LETTER OF THE ST. CATHARINES GENERAL HOSPITAL TO ME DATED MARCH 3RD, 1972, IN WHICH THE HOSPITAL DENIED MISS ELLENS' GRIEVANCE.

MISS ELLENS IS NOT PREPARED TO ACCEPT THIS DECISION AND WISHES THAT THE MATTER BE ARBITRATED UNDER ARTICLE 9 OF THE COLLECTIVE AGREEMENT. IN THE LIGHT OF THE PROVISIONS OF ARTICLE 9.01 AND IN THE LIGHT OF SECTION 60 OF THE LABOUR RELATIONS ACT, WE CALL UPON SERVICE EMPLOYEES' UNION LOCAL 204 TO INITIATE ARBITRATION PROCEEDINGS BY NOTIFYING THE ST. CATHARINES GENERAL HOSPITAL OF ITS INTENTION TO GO TO ARBITRATION WITHIN THE TIME LIMITED BY ARTICLE 9.01.

IN VIEW OF THE FACT THAT THE TIME LIMITED BY ARTICLE 9.01 OF THE COLLECTIVE AGREEMENT WILL SHORTLY EXPIRE, WE ASK THAT WE MAY RECEIVE CONFIRMATION FROM YOU, PROMPTLY, THAT SERVICE EMPLOYEES' UNION LOCAL 204 HAS INITIATED ARBITRATION PROCEEDINGS."

15. ON MARCH 7, 1972, COUNSEL FOR THE COMPLAINANT WROTE TO THE HOSPITAL ADVISING THAT IT WISHED THE MATTER TO GO TO ARBITRATION. THE LETTER STATED THAT IN VIEW OF THE UNION'S FAILURE TO INITIATE ARBITRATION PROCEEDINGS THAT SHE INTENDED TO DO SO. A COPY OF THIS LETTER WENT TO THE RESPONDENT.

16. THE RESPONDENT, UPON RECEIPT OF THE COPY OF THE LETTER OF MARCH 7TH ABOVE, ADVISED THE HOSPITAL THAT IT DID NOT WISH TO INVOKE THE ARBITRATION PROVISIONS OF THE COLLECTIVE AGREEMENT "AS THERE HAS BEEN NO BREACH OF THE AGREEMENT".

17. THE COMPLAINANT NOTIFIED THE HOSPITAL BY LETTER OF MARCH 13, 1972 OF THE NAME OF HER NOMINEE TO THE BOARD.

18. THE FINAL PIECE OF CORRESPONDENCE SUBMITTED IN EVIDENCE IS A LETTER DATED MARCH 14, 1972 FROM MR. LEARIE TO MR. HERRIDGE, WHICH IS AS FOLLOWS:

"ON BEHALF OF THE ST. CATHARINES GENERAL HOSPITAL, I AM AUTHORIZED TO ACKNOWLEDGE YOUR LETTER OF MARCH 7TH AND ENCLOSURE AND TO MAKE THIS REPLY:

YOU NOTIFY US OF

"MISS ELLEN'S INTENTION TO GO TO ARBITRATION"

THERE HAS ALSO BEEN RECEIVED A LETTER FROM THE UNION'S COUNSEL ADVISING THAT

"MISS ELLENS CANNOT INVOKE THE ARBITRATION PROCESS"

IT WOULD SEEM THAT THE UNION'S POSITION IS WELL FOUNDED IN THAT THE ONLY PROVISION IN THE COLLECTIVE AGREEMENT PROVIDING FOR THE INITIATION OF ARBITRATION PROCEEDINGS IS AS FOLLOWS:

9.01 "IN THE EVENT OF A FAILURE TO REACH A SETTLEMENT UNDER THE PROCEDURE SET OUT ABOVE, EITHER PARTY MAY INITIATE ARBITRATION PROCEEDINGS BY NOTIFYING THE OTHER PARTY IN WRITING OF THEIR INTENTION TO GO TO ARBITRATION WITHIN TEN (10) DAYS OF THE DATE OF THE MEETING LAST REFERRED TO"

SINCE THE UNION AND THE HOSPITAL ARE THE ONLY PARTIES TO THE COLLECTIVE AGREEMENT, IT DOES NOT APPEAR THAT MISS ELLENS HAS THE POWER YOU ARE TRYING TO EXERCISE FOR HER. IT WOULD BE MORE DIFFICULT FOR THE HOSPITAL TO COME TO THIS CONCLUSION IF

(A) A FULL OPPORTUNITY FOR YOU TO MAKE REPRESENTATIONS ON MISS ELLENS' BEHALF

AT THE MEETING ON FEBRUARY 24 AND THOSE REPRESENTATIONS HAD NOT BEEN FULLY AND SERIOUSLY CONSIDERED BY THE HOSPITAL'S MANAGEMENT IN MAKING THE DECISION OF MARCH 3RD.

- (B) MISS ELLENS' DESIRE NOT TO PAY DUES TO THE UNION HAS ALREADY BEEN THE SUBJECT OF A HEARING BY THE ONTARIO LABOUR RELATIONS BOARD. IT SEEMS TO THE HOSPITAL THAT THE OBLIGATION OF MISS ELLENS' TO PAY UNION DUES WAS RECOGNIZED BY MISS ELLENS, OR HER ADVISORS, AT THE TIME THE APPLICATION WAS MADE TO THE ONTARIO LABOUR RELATIONS BOARD.

THUS, YOU ARE INFORMED THAT, AT THIS TIME, THE HOSPITAL BELIEVES THAT MISS ELLENS DOES NOT HAVE THE RIGHT TO INITIATE ARBITRATION PROCEEDINGS AND THUS THE HOSPITAL DECLINES NOW TO APPOINT AN ARBITRATOR.

SINCE THE ABOVE WAS WRITTEN, THERE HAS BEEN RECEIVED YOUR LETTER OF MARCH 13, 1972, APPOINTING MR. W. S. POSTHUMUS AS ARBITRATOR. CONSIDER THE ABOVE AN ANSWER TO THAT LETTER ALSO, PLEASE."

19. IN THE CIRCUMSTANCES OF THE PRESENT CASE, THE UNION FINDS ITSELF IN AN UNUSUAL POSITION BECAUSE THE GRIEVANCE WHICH THE COMPLAINANT SEEKS TO HAVE IT TAKE TO ARBITRATION IS ALMOST AS MUCH A GRIEVANCE AGAINST ITSELF AS IT IS AGAINST THE EMPLOYER. THIS IS SO SINCE THE UNION DEMANDED AND THE EMPLOYER IMPLEMENTED THE DISCHARGE OF MISS ELLENS, EACH PURPORTING TO ACT UNDER THE TERMS OF THE AGREEMENT. A SITUATION HAS THUS ARISEN WHERE THE UNION AND THE EMPLOYER ARE VIRTUALLY ALLIES IN RESISTING THE COMPLAINANT'S INSISTENCE THAT THE GRIEVANCE SHOULD BE TAKEN TO ARBITRATION. TO THAT EXTENT, THEY THUS HAVE A COMMON INTEREST. TO SO STATE, THE MATTER IS NOT, OF COURSE, TO IMMEDIATELY CONDEMN EITHER OF THOSE PARTIES.

20. BEFORE GOING ANY FURTHER INTO THE MATTER, THE BOARD BELIEVES IT SHOULD MAKE CLEAR THAT IT DOES NOT CONSIDER THE DUTY OF FAIR REPRESENTATION REQUIRES A UNION TO BLINDLY CARRY EVERY GRIEVANCE THROUGH TO ARBITRATION AT THE DEMAND OF THE GRIEVOR. THE GRIEVANCE PROCEDURES SET OUT IN COLLECTIVE AGREEMENTS ARE OBVIOUSLY DESIGNED TO AFFORD OPPORTUNITY FOR SETTLEMENT AND COMPROMISE AT ANY OF THE DIFFERENT LEVELS OF CONSULTATION UP TO ARBITRATION. THE SETTLEMENT OF DISPUTES AND GRIEVANCES OF EMPLOYEES UNDER THE TERMS OF A COLLECTIVE AGREEMENT HAS BEEN SAID TO BE AS MUCH A PART OF THE GENERAL PROCESS OF COLLECTIVE BARGAINING AS ARE THE NEGOTIATIONS WHICH BRING ABOUT A COLLECTIVE AGREEMENT, (SEE UNITED STEEL WORKERS OF AMERICA, LOCAL 2853

V. WELLAND-VALE MANUFACTURING Co. LTD. [1943] 3 D.L.R., p. 786). IN OUR OPINION, THE SETTLEMENT OF DISPUTES INCLUDES THE RIGHT AS WELL AS THE DUTY ON THE PART OF THE BARGAINING AGENT TO REFUSE, ON PROPER GROUNDS, TO PROCESS A GRIEVANCE AT ALL OR TO WITHDRAW OR ABANDON IT AT ANY STAGE IN THE GRIEVANCE PROCEDURE. THE ABOVE CASE STATES THAT THE BARGAINING AGENT IS THE AGENT FOR ALL EMPLOYEES WHETHER THEY BE MEMBERS OF THE UNION OR NOT AND THAT IT MUST REPRESENT EACH EMPLOYEE IN THE BARGAINING UNIT WITHOUT DISCRIMINATION. THIS PRINCIPLE IS THE SAME AS THAT EMBODIED IN SECTION 60 OF THE LABOUR RELATIONS ACT.

21. THE FOREGOING RIGHT OF THE BARGAINING AGENT TO SETTLE DISPUTES AND GRIEVANCES, HOWEVER, IS NOT, IN ANY WAY, CURTAILED BY THE PROVISIONS OF SECTION 60 OF THE ACT. THE SECTION IS DESIGNED ONLY TO ENSURE THAT, IN THE COURSE OF EXERCISING ITS POWERS, THE UNION DOES NOT ACT IN A WAY THAT IS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH.

22. THE PRESENT INQUIRY THEREFORE IS NOT CONCERNED WITH THE FUNDAMENTAL RIGHT OF THE BARGAINING AGENT TO SETTLE OR WITHDRAW A GRIEVANCE, BUT RATHER WITH THE QUESTION AS TO WHETHER, IN DEALING WITH THE PRESENT MATTER, THE UNION FELL SHORT OF THE REQUIREMENTS OF FAIR REPRESENTATION SET OUT IN SECTION 60 OF THE ACT.

23. IN FISHER V. PEMBERTON ET AL [1969] 8 D.L.R. 3d 521 (B.C.S.C.) AT 546, THE BRITISH COLUMBIA SUPREME COURT DEALT WITH AN ACTION BY A TRADE UNION MEMBER AGAINST THE TRADE UNION FOR BREACH OF DUTY OF FAIR REPRESENTATION. THE FACTS ARE SUFFICIENTLY AKIN TO THOSE IN THE PRESENT CASE TO WARRANT AN EXAMINATION OF THE DECISION.

24. THE HEADNOTE TO THE CASE READS, IN PART, AS FOLLOWS:

"THE BROAD AUTHORITY OF A TRADE UNION AS EXCLUSIVE BARGAINING REPRESENTATIVE OF A UNIT OF EMPLOYEES PURSUANT TO THE LABOUR RELATIONS ACT, R.S.B.C. 1960, c. 205, CARRIES WITH IT THE RESPONSIBILITY OF REPRESENTING THE INTERESTS OF ALL EMPLOYEES FAIRLY AND IMPARTIALLY WITHOUT HOSTILITY TO ANY. WHERE A MEMBER OF A TRADE UNION WHO IS ACTIVELY SUPPORTING A RIVAL UNION IN A JURISDICTIONAL DISPUTE COMMITS A BREACH OF COMPANY REGULATIONS, AN OFFICIAL OF HIS UNION IS NOT IN BREACH OF ANY DUTY TO THE MEMBER SIMPLY BECAUSE HE REPORTS THE BREACH OF REGULATIONS TO AN OFFICER OF THE COMPANY WITH THE RESULT THAT THE MEMBER IS DISCHARGED FROM HIS EMPLOYMENT. THE UNION HAS, HOWEVER, A DUTY OF FAIR REPRESENTATION OF THE MEMBER IN CONNECTION WITH HIS SUBSEQUENT GRIEVANCE. IN THIS RESPECT

THE STANDARDS OF A PROFESSIONAL ADVOCATE CANNOT BE IMPOSED UPON THE UNION OFFICIALS WHO ARE INVOLVED. NEVERTHELESS, WHERE THE UNION MEN WHO APPEAR ON THE MEMBER'S BEHALF ARE HOSTILE TO HIM, AND ARE ANXIOUS TO SEE HIM OUT OF THE COMPANY'S MILL, AND WHERE THEY MAKE NO EFFORT TO OBTAIN FROM THE MEMBER AND OTHER WITNESSES AN ACCOUNT OF THE EVENTS CONSTITUTING THE ALLEGED BREACH OF COMPANY REGULATIONS, SO THAT A DEFENCE OF THE MEMBER IS NEVER PUT UP, THERE IS A BREACH OF THE DUTY OF FAIR REPRESENTATION, AND AN ACTION LIES AGAINST THE TRADE UNION FOR DAMAGES FOR BREACH OF THIS DUTY. HOWEVER, WHERE THE MEMBER WOULD NOT HAVE BEEN REINSTATED BY THE COMPANY REGARDLESS OF THE REPRESENTATIONS WHICH THE UNION MIGHT HAVE MADE AND WHERE THE PROSPECTS OF HIS GAINING AN ARBITRATIONS AWARD IN HIS FAVOUR ARE NEGLIGIBLE, THE CASE IS ONE FOR NOMINAL DAMAGES ONLY."

25. IN THE CASE BEFORE US, THE UNION ALLEGED A BREACH OF THE COLLECTIVE AGREEMENT BY THE COMPLAINANT AND DEMANDED HER DISMISSAL. THERE WAS, HOWEVER, NO COMPLAINT MADE BY THE UNION WITH RESPECT TO THE HOSPITAL NOTWITHSTANDING THE FACT THAT ARTICLE 4 OF THE AGREEMENT APPEARS, ON THE FACE OF ITS, TO OBLIGE THE HOSPITAL TO DEDUCT DUES AND FORWARD THEM TO THE UNION.

26. ALTHOUGH IN FISHER V. PEMBERTON ET AL (SUPRA) CASE, THE UNION REPORTED A BREACH OF REGULATIONS RATHER THAN A VIOLATION OF A COLLECTIVE AGREEMENT, THE RESPONSE OF THE EMPLOYER WAS THE SAME AS IN THE PRESENT CASE, NAMELY, DISMISSAL. THE COURT HELD THAT THERE WAS NO BREACH BY THE UNION OF ITS DUTY TO THE MEMBER IN REPORTING HIS VIOLATION AND CERTAINLY WE WOULD BE OF THE SAME OPINION WITH RESPECT TO THE UNION'S ACTION IN THE PRESENT CASE, HAD IT GONE NO FURTHER INITIALLY THAN TO COMPLAIN TO THE EMPLOYER THAT THE DUES WERE NOT BEING PAID. THE SITUATION HERE SEEMS MORE COMPLICATED BECAUSE OF THE DIRECT DEMAND BY THE UNION FOR DISMISSAL. THE COURT, IN THE ABOVE CASE, HELD THAT HAVING BROUGHT ABOUT THE DISMISSAL OF THE EMPLOYEE THROUGH ITS REPORT OF THE BREACH OF REGULATIONS, THE UNION HAD, NEVERTHELESS, A DUTY OF FAIR REPRESENTATION IN CONNECTION WITH HIS SUBSEQUENT GRIEVANCE. IN OUR OPINION, THE UNION IN THE PRESENT CASE WAS SIMILARLY OBLIGATED, DIFFICULT AS THAT MAY SEEM.

27. IN THE CASE BEFORE THE BOARD, AS ALREADY NOTED, THERE IS ALLEGED A BREACH OF THE UNION SECURITY TERMS OF THE COLLECTIVE AGREEMENT. IT IS BEYOND DISPUTE THAT ONE OF THE FUNCTIONS OF A UNION ON BEHALF OF THE EMPLOYEES IN THE UNIT IT REPRESENTS IS, TO WHAT IS COMMONLY CALLED "POLICE", THE COLLECTIVE AGREEMENT. THIS

CLEARLY INVOLVES A DUTY NOT ONLY TO THE INDIVIDUAL EMPLOYEES BUT ALSO AN OVERALL DUTY TO PROTECT THE INTERESTS OF THE EMPLOYEES AS A WHOLE AND THE INTEGRITY OF THE BARGAINING UNIT. THE DUTY OF SERVICE TO THE UNION AS A WHOLE IS, SURELY, SELF-EVIDENCE WITH RESPECT TO UNION SECURITY CLAUSES GOVERNING CHECK OFF OF UNION DUES. IT IS TRUE THAT THERE IS ALSO INVOLVED, IN THAT AREA, A DEGREE OF SELF-INTEREST ON THE PART OF THE UNION AS AN ORGANIZATION APART FROM ITS MEMBERS. BUT, IT IS ALSO TRUE, THAT UNION SECURITY CLAUSES ARE DESIGNED WITH A VIEW TO PRESERVING, THROUGH MUTUAL, ALBEIT COMPULSORY, CONTRIBUTIONS, THE VIABILITY AND THE COHESION OF THE BARGAINING UNIT AND TO ENSURING THE ABILITY OF THE BARGAINING AGENT TO PROMOTE THE INTERESTS OF THE EMPLOYEES. THESE ARE MATTERS OF PROPER CONCERN TO THE MEMBERS OF THE UNIT AND THEREFORE TO THE UNION CHARGED WITH REPRESENTING THEM AS SOLE BARGAINING AGENT. THEY CARRY A CONCOMITANT DUTY OF THE UNION TO ENFORCE THEM IN THE INTEREST OF THE BARGAINING UNIT. THIS DOUBLE DUTY WAS NOT AN ISSUE IN THE FISHER V. PEMBERTON (SUPRA) CASE. IT IS ONE OF THE TASKS OF THE UNION TO BALANCE, INsofar AS IS REASONABLE, THESE DOUBLE INTERESTS AND DUTIES.

28. IN THE SITUATION BEFORE THE BOARD, IT IS THEREFORE NOT DIFFICULT TO UNDERSTAND THE ANXIETY OF THE UNION TO PREVENT ANY ENCROACHMENT UPON OR WEAKENING OF THE UNION SECURITY PROVISIONS OF THE AGREEMENT AS IT READS THEM. WHETHER THE PROVISIONS IN FACT MEAN WHAT THE UNION, AND INDEED THE COMPANY, BELIEVED THEY MEAN, IS ANOTHER MATTER. THE PROBLEM IN THE PRESENT CASE ARISES OUT OF A POSSIBLE CONFLICT BETWEEN THE UNION'S DUTY OF FAIR REPRESENTATION OF A DISCHARGED MEMBER AND ITS DUTY TO FAIRLY PROTECT THE MEMBERSHIP BODY AGAINST DAMAGE TO THEIR UNIT INTEGRITY THROUGH THE BREACH OF THE UNION SECURITY CLAUSES AS IT UNDERSTANDS THEM.

29. THE UNION BY ITS COURSE OF ACTION, BASED AS IT WAS UPON ITS INTERPRETATION OF THE COLLECTIVE AGREEMENT, FOUND ITSELF WITH LITTLE ROOM FOR A COMPROMISE RESOLUTION OF THE MATTER. THIS IS SO BECAUSE, HAVING DEMANDED THE DISCHARGE OF THE COMPLAINANT, IT MUST HAVE FOUND ITSELF HARD PUT TO PROTEST, IN GOOD FAITH, THE IMPROPRIETY OF THE ACTION IT HAD INSISTED UPON THE EMPLOYER TAKING.

30. IT IS, NOT FOR US TO SAY WHAT WE THINK MIGHT HAVE BEEN THE WISEST COURSE FOR THE UNION TO ADOPT IN THE CIRCUMSTANCES. WE ARE CONFRONTED WITH THE QUESTION AS TO WHETHER WHAT WAS DONE WAS DONE IN GOOD FAITH, WITHOUT DISCRIMINATION AND IN A MANNER THAT WAS NOT ARBITRARY.

31. WE MIGHT REMARK AT THIS POINT THAT, ON THE EVIDENCE, IT IS CLEAR THAT THERE WAS NO ANIMOSITY DISPLAYED BY THE UNION WITH RESPECT TO THE GRIEVOR. IN FACT, AS ALREADY INDICATED, THE UNION, IN ITS LETTER TO HER OF DECEMBER 21, 1971, COMMENDED HER FOR HER CONVICTIONS AND BELIEFS AND REMARKED THAT IT FOUND IT ADMIRABLE THAT PEOPLE HELD SUCH BELIEFS. WE HAVE ALREADY NOTED THAT IT DID NOT OPPOSE HER APPLICATION UNDER SECTION 39 OF THE ACT.

32. DURING THE COURSE OF THE MATTER, THE UNION HAD THE BENEFIT OF AND FOLLOWED THE ADVICE OF ITS COUNSEL AS TO THE INTERPRETATION OF THE RELEVANT CLAUSES OF THE AGREEMENT. THIS ADVICE WAS CONFIRMED AND FORTIFIED BY THE OPINION OF COUNSEL FOR THE HOSPITAL. IT IS TO BE OBSERVED, OF COURSE, THAT COUNSEL FOR THE COMPLAINANT PLACED A DIFFERENT INTERPRETATION UPON THE UNION SECURITY CLAUSES THAN DID THE UNION AND THE HOSPITAL. WITHOUT ATTEMPTING TO DECIDE THAT ISSUE, WE WOULD SIMPLY REMARK THAT THE LANGUAGE OF THE COLLECTIVE AGREEMENT OBVIOUSLY LEAVES AMPLE ROOM FOR ARGUMENT AS TO ITS INTENT. IT MATTERS NOT, HOWEVER, INsofar AS THE MATTER BEFORE US IS CONCERNED, WHETHER THE INTERPRETATION PLACED UPON THE COLLECTIVE AGREEMENT BY THE UNION MIGHT BE ERRONEOUS PROVIDED ONLY IT WAS ARRIVED AT AFTER DUE AND PROPER CONSIDERATION, THAT IS, IN GOOD FAITH AND NOT ARBITRARILY.

33. ON THE BASIS OF ALL OF THE EVIDENCE, THE BOARD FINDS THAT THE UNION ACTED THROUGHOUT THIS MATTER IN THE GENUINE BELIEF THAT THE COLLECTIVE AGREEMENT REQUIRES THAT EMPLOYEES IN THE BARGAINING UNIT MUST, AS A CONDITION OF CONTINUED EMPLOYMENT, PAY DUES TO THE UNION AND THAT IT WAS OBLIGED TO ENFORCE THAT REQUIREMENT EVEN TO THE DETRIMENT OF THE INDIVIDUAL EMPLOYEE. WE, THEREFORE, FIND THAT THE ACTION OF THE UNION WITH RESPECT TO THE COMPLAINANT IN THE CASE BEFORE US WAS NOT ARBITRARY, DISCRIMINATORY, OR TAKEN IN BAD FAITH.

34. THE COMPLAINT IS THEREFORE DISMISSED.

2255-72-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (APPLICANT) v. DRUMMOND BUSINESS FORMS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: HENRY M. POLLIT AND RONALD TOZZI FOR THE APPLICANT; D. CHURCHILL-SMITH, M. MITCHNICK AND W. A. MOSER FOR THE RESPONDENT; BRENDA JAMESON FOR THE OBJECTORS.

DECISION OF THE BOARD: AUGUST 9, 1972.

1. THE NAME "DRUMMOND BUSINESS FORMS" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "DRUMMOND BUSINESS FORMS LIMITED".

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ORANGEVILLE,

SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY AND OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. IN THIS APPLICATION FOR CERTIFICATION, A STATEMENT OF DESIRE WAS FILED IN OPPOSITION TO THE APPLICANT BEARING THE SIGNATURES OF FIFTEEN OUT OF A TOTAL OF THIRTY-EIGHT EMPLOYEES IN THE BARGAINING UNIT. AT THE BOTTOM OF THE SECOND SHEET OF THE SAID STATEMENT, APPEARS THE FOLLOWING HANDWRITTEN NOTATION:

"THIS LIST HAS BEEN WITNESSED BY
BRENDA JAMESON
84 SEC. ST. APT. 304
ORANGEVILLE ONTARIO."

5. OF THE TOTAL OF TWENTY-EIGHT EMPLOYEES WHO HAD INITIALLY SIGNED UNION CARDS IN THE APPLICANT, EIGHT OF THESE ALSO SIGNED THE STATEMENT OF DESIRE. IF THEREFORE WEIGHT WERE GIVEN TO THE SAID STATEMENT, IT WOULD REDUCE THE UNQUALIFIED EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT TO LESS THAN THE SIXTY-FIVE PER CENT REQUIREMENT FOR OUTRIGHT CERTIFICATION. ACCORDINGLY, IN VIEW OF THE RELEVANCY OF THE SAID STATEMENT, THE BOARD PROCEEDED TO INQUIRE INTO ITS ORIGINATION, PREPARATION AND CIRCULATION.

6. BRENDA JAMESON, A PRODUCTION EMPLOYEE WITH THE RESPONDENT TESTIFIED ON BEHALF OF THE OBJECTORS CONCERNING THE ORIGINATION, PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE. ALTHOUGH HER STATUS TO APPEAR AS SUCH WAS CHALLENGED AT THE HEARING BY THE APPLICANT AND DESPITE HER INITIAL TESTIMONY TO THE EFFECT THAT SHE MIGHT BE "PREJUDICED" IN FAVOUR OF THE APPLICANT, IT IS CLEAR, HAVING REGARD TO ALL OF THE EVIDENCE, THAT ALL OF HER ACTIONS INCLUDING HER ATTENDANCE BEFORE US IN THIS REGARD WERE PURSUANT TO SPECIFIC DIRECTIONS EMANATING FROM AN INFORMAL SHOP COMMITTEE OF WHICH SHE WAS A MEMBER.

7. THE WITNESS FURTHER TESTIFIED THAT SHE PREPARED THE HEADING FOR THE STATEMENT OF DESIRE ON FRIDAY, JULY 14, 1972 AT WORK DURING HER LUNCH BREAK FOLLOWING A MEETING HELD BETWEEN THE RESPONDENT AND THE SHOP COMMITTEE THAT MORNING. UPON "CROSS-EXAMINATION", AS LIMITED BY QUESTIONS FILTERED THROUGH THE BOARD, SHE STATED THAT A FELLOW EMPLOYEE, GERALD LONG SPECIFICALLY REQUESTED HER TO TYPE OUT THE STATEMENT OF DESIRE ON JULY 12, 1972. GERALD LONG WAS NOT CALLED TO GIVE EVIDENCE AT THE HEARING.

8. IN THESE CIRCUMSTANCES, WE ARE SATISFIED THAT ALTHOUGH BRENDA JAMESON PREPARED AND CIRCULATED THE STATEMENT OF DESIRE, THE ORIGINATION OF THIS DOCUMENT STEMS WITH GERALD LONG. IN THIS REGARD, WE FIND THAT BRENDA JAMESON WAS THE MERE INSTRUMENTALITY (OR TO USE THE APPLICANT'S TERM - THE "CAT'S PAW") UTILIZED BY GERALD LONG AND SUBSEQUENTLY SANCTIONED BY THE EMPLOYEES THEMSELVES, TO EFFECTUATE THE STATEMENT OF DESIRE.

9. IN THE ABSENCE THEREFORE OF ANY EVIDENCE FROM GERALD LONG, WE ARE OF THE OPINION THAT THE OBJECTORS HAVE NOT ESTABLISHED THE CIRCUMSTANCES SURROUNDING THE ORIGINATION OF THE STATEMENT OF DESIRE AND ACCORDINGLY WE CANNOT ACCEPT IT AS CASTING DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT. (IN THIS REGARD, SEE BAUSCH & LOMB OPTICAL COMPANY LIMITED CASE OLRB M.R. JULY 1969, P. 478; CHERNEY BROS. LIMITED CASE OLRB M.R. JANUARY 1965, P. 525; INTERNATIONAL HARVESTER COMPANY OF CANADA LIMITED CASE OLRB M.R. JULY 1969, P. 561; MARSH FROZEN FOODS LIMITED CASE, OLRB M.R. SEPTEMBER, 1970, P. 649.)

10. IN VIEW OF OUR FINDING HEREIN, IT WILL NOT BE NECESSARY FOR THE BOARD TO DEAL FURTHER WITH THE EVIDENCE CONCERNING THE CIRCUMSTANCES SURROUNDING THE PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE. IN LIKE MANNER, IT WILL NOT BE NECESSARY FOR US TO DEAL SPECIFICALLY WITH THE EVIDENCE TENDERED IN THESE PROCEEDINGS PURSUANT TO THE CHARGES FILED WITH THE BOARD BY THE APPLICANT'S LETTER DATED JULY 26, 1972.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 20, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

2083-72-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. ALLBRIGHT PLATERS LIMITED (RESPONDENT) V. ALLBRIGHT PLATERS EMPLOYEE'S UNION (INTERVENER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: ROSS RUSSELL AND STEVE FARKAS FOR THE APPLICANT; D.G. PYLS, A.S.J. CORSO AND J.R. WRIGHT FOR THE RESPONDENT; DAVID F. SMYE FOR THE INTERVENER.

DECISION OF THE BOARD: AUGUST 21, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. IN THIS CASE THE INTERVENER TRADE UNION AND THE RESPONDENT ALLEGED THAT THIS APPLICATION WAS UNTIMELY BECAUSE OF AN EXISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER TRADE

UNION. IT APPEARED THAT THE INTERVENER TRADE UNION HAD BEEN CERTIFIED BY THIS BOARD IN 1951 AND HAD ENTERED INTO SOME COLLECTIVE AGREEMENTS INCLUDING THE ALLEGED AGREEMENT RELIED UPON AS A BAR WHICH APPEARS TO HAVE COME INTO EFFECT ON JANUARY 17, 1971, TO RUN UNTIL JANUARY 16, 1974. THE APPLICANT CLAIMED THAT THE COLLECTIVE AGREEMENT WAS NOT A BAR TO THE APPLICATION AND FURTHER ALLEGED THAT THE INTERVENER TRADE UNION WAS NOT A BONA FIDE TRADE UNION AS IS RECOGNIZED BY THIS BOARD.

3. AFTER CONSIDERING THE EVIDENCE THE BOARD IS OF THE OPINION THAT NOTWITHSTANDING AN EARLIER FINDING BY THIS BOARD THAT THE INTERVENER WAS A TRADE UNION THAT OVER THE YEARS IT HAS DISSIPATED, AND IN EFFECT GONE OUT OF EXISTENCE. THEY HAVE NO UNION MEETINGS, THERE ARE NO BOOKS OR RECORDS, THERE HAVE BEEN NO UNION ELECTIONS, NO RATIFICATION OF COLLECTIVE AGREEMENTS, THERE APPEARS TO BE NO FUNDS, THD THE PERSON WHO APPEARS AS THE VICE-PRESIDENT OF THE UNION AND THE SIGNATORY TO THE COLLECTIVE AGREEMENT IN 1971 APPEARS TO HAVE LEFT THE EMPLOYMENT OF THE COMPANY SOMETIME IN 1968. ACCORDINGLY, WE FIND THAT THE INTERVENER TRADE UNION IS NOT AN "ORGANIZATION OF EMPLOYEES" WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

4. SINCE SECTION 1(1)(E) OF THE LABOUR RELATIONS ACT REQUIRES AN AGREEMENT IN WRITING BETWEEN AN EMPLOYER ON THE ONE HAND AND A TRADE UNION ON THE OTHER HAND, IT WOULD FOLLOW THAT THE DOCUMENT THAT WAS PRESENTED AS A BAR IS NOT A COLLECTIVE AGREEMENT BECAUSE IT WAS NOT SIGNED BY A TRADE UNION. THEREFORE THE OBJECTION TO THE TIMELINESS OF THE APPLICATION ON THAT GROUND CANNOT SUCCEED. IN SO FINDING WE WISH TO POINT OUT THAT IT IS A REASONABLE INFERENCE FROM THE EVIDENCE THAT WHEN THE PREDECESSOR OWNER OF THE COMPANY SIGNED THE ALLEGED COLLECTIVE AGREEMENT WITH THE TRADE UNION, THAT THE COMPANY KNEW FULL WELL THAT THE TRADE UNION HAD CEASED TO EXIST AND ACCORDINGLY THE ISSUE DOES NOT ARISE AS TO THE POSITION OF AN EMPLOYER WHO SIGNS A COLLECTIVE AGREEMENT ON THE UNDERSTANDING THAT THE TRADE UNION STILL CONTINUES IN EXISTENCE.

5. IN THE RESULT WE DETERMINE THAT THERE IS NO BAR TO THIS APPLICATION.

. . .

1741-71-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) V. BEST FORM BRASSIERE COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: E. ROVET AND M. DAVIDSON FOR THE APPLICANT; M. SCHULMAN AND P. ROULEAU FOR THE RESPONDENT; R. J. ADAMS FOR THE OBJECTORS.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER O. HODGES:
August 15, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
2. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN CORNWALL, ONTARIO SAVE AND EXCEPT FOREMEN, FORELADIES, THOSE ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE, CLERICAL AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED FOR THE SUMMER VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
3. THE BOARD IS SATISFIED ON THE BASIS OF ALL OF THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY PER CENT BUT LESS THAN SIXTY-FIVE PERCENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 27, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.
4. THERE WERE ALSO FILED WITH THE BOARD TWO HANDWRITTEN STATEMENTS OF DESIRE BEARING THE SIGNATURES OF 28 PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT EXPRESSING OPPOSITION TO THE APPLICATION. SINCE ON THE BASIS OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT, IT HAS ONLY ESTABLISHED ITS ENTITLEMENT TO THE TAKING OF A REPRESENTATION VOTE, THE PARTIES WERE ADVISED AT THE INITIAL HEARING OF THIS MATTER ON JUNE 1, 1972, THAT THESE STATEMENTS OF DESIRE, EVEN IF FOUND BY THE BOARD TO REPRESENT A VOLUNTARY EXPRESSION OF THE DESIRES OF THE SIGNATORIES THEREIN, COULD NEVERTHELESS IN NO WAY AFFECT THE APPLICANT'S ENTITLEMENT TO A REPRESENTATION VOTE IN THE CIRCUMSTANCES. ACCORDINGLY, IT WAS NOT NECESSARY FOR THE BOARD TO INQUIRE INTO THE ORIGATION, PREPARATION AND CIRCULATION OF THESE STATEMENTS OF DESIRE.
5. HOWEVER, BY LETTER DATED MAY 9, 1972, THE APPLICANT CHARGES IN EFFECT, THAT THE ACTIONS OF THE RESPONDENT WERE OF SUCH A NATURE THAT A REPRESENTATION VOTE IN THE CIRCUMSTANCES WOULD NOT BE LIKELY TO DISCLOSE THE TRUE WISHES OF THE EMPLOYEES IN THE BARGAINING UNIT. IN THIS REGARD, THE APPLICANT REQUESTS THAT THE BOARD EXERCISE ITS DISCRETION PURSUANT TO THE PROVISIONS OF SECTION 7(4) OF THE ACT AND CERTIFY THE APPLICANT OUTRIGHT WITHOUT THE TAKING OF A REPRESENTATION VOTE.
6. THE ESSENTIAL FACTS GIVING RISE TO THESE CHARGES, WE FIND, ARE AS FOLLOWS: ON FRIDAY, MARCH 10, 1972, MR. SCHULMAN THE PLANT MANAGER ATTENDED THE LUNCH ROOM ON THE PREMISES OF THE RESPONDENT

AT 8 A.M., THE NORMAL STARTING TIME OF THE SHIFT AND ADVISED THE EMPLOYEES TO REMAIN. AFTER ADDRESSING THE EMPLOYEES FOR APPROXIMATELY ONE HALF HOUR, HE SUGGESTED THAT A VOTE BE CONDUCTED TO DETERMINE WHETHER THE EMPLOYEES WISHED TO BE REPRESENTED BY A TRADE UNION OR A SHOP COMMITTEE. AFTER SOME CONFUSION, A VOTE WAS CONDUCTED IN HIS ABSENCE AND THE MAJORITY OF THE BALLOTS CAST FAVOURED A COMMITTEE. UPON BEING INFORMED OF THE RESULTS, MR. SCHULMAN THEN INSTRUCTED THE GIRLS TO PROCEED WITH THE ELECTION OF THE MEMBERS ON THIS COMMITTEE. AGAIN THE VOTE WAS CONDUCTED IN HIS ABSENCE. THE BALLOTS WERE THEN TURNED OVER TO MR. SCHULMAN WHO ALONG WITH PIERRETTE FARLEY AN OPERATOR EMPLOYED WITH THE RESPONDENT, PROCEEDED WITH THE COUNT. HOWEVER, UPON DISCOVERING THAT THERE WERE MORE BALLOTS THAN NAMES, HE RULED THE VOTE ABORTIVE AND DIRECTED THAT ANOTHER VOTE BE TAKEN. THIS VOTE WAS CONDUCTED AT APPROXIMATELY 1:30 P.M. AND BALLOTS WERE HANDED TO EACH EMPLOYEE AT HER INDIVIDUAL WORK STATION IN THE PLANT. THE RESULTS OF THIS VOTE FINALLY LED TO THE ELECTION OF CECIL CHARTRAND, CLAUDETTE FORE AND PRISCILLA MARTIN AS MEMBERS OF THE COMMITTEE. ON FRIDAY, MARCH 17, 1972, THE RESPONDENT RECEIVED THE FORM 5 NOTICE TO EMPLOYEES OF THIS APPLICATION AND PRIOR TO POSTING IT ON THE PREMISES, MR. SCHULMAN CALLED THE MEMBERS OF THE COMMITTEE INTO HIS OFFICE WHEREIN HE THEN PROCEEDED TO DISCUSS THE CONTENTS OF THIS DOCUMENT WITH THEM. SHORTLY THEREAFTER, THE MEMBERS OF THE COMMITTEE ATTEMPTED TO DRAFT A STATEMENT OF DESIRE OPPOSING THE APPLICANT, IN THE LUNCH ROOM. THEY THEN RETURNED TO MR. SCHULMAN'S OFFICE AND UPON EXPLAINING THEIR PROBLEM, WERE TOLD BY HIM THAT HE WOULD SEEK THE AID OF HIS "ATTORNEY" IN THIS REGARD. THEY WERE SUBSEQUENTLY ASKED TO REATTEND AT MR. SCHULMAN'S OFFICE APPROXIMATELY ONE HOUR LATER AT WHICH TIME MR. SCHULMAN HANDED A HANDWRITTEN STATEMENT TO CECILE CHARTRAND, FROM WHICH SHE THEN PROCEEDED TO COPY VERBATIM AS THE HEADING FOR THE STATEMENT OF DESIRE. THIS PROCESS HAVING BEEN COMPLETED, HE THEN GAVE THE COMMITTEE A CHOICE AS TO WHETHER, FOR THE PURPOSE OF OBTAINING SIGNATURES TO THIS DOCUMENT, THEY WISHED TO UTILIZE THE RESPONDENT'S CAFETERIA OR LUNCH ROOM. THE COMMITTEE CHOSE THE LUNCH ROOM. PRISCILLA MARTIN THEN INDIVIDUALLY, DURING WORKING HOURS, ESCORTED EACH EMPLOYEE FROM THE LATTER'S PARTICULAR WORK STATION TO THE LUNCH ROOM WHO, UPON HAVING THE PURPOSE OF THE DOCUMENT EXPLAINED BY CECILE CHARTRAND, WAS ASKED TO SIGN THE DOCUMENT IF SHE DESIRED NOT TO HAVE A UNION REPRESENT THE EMPLOYEES. WHEN THESE SIGNATURES WERE OBTAINED ANOTHER MEETING WAS HELD WITH MR. SCHULMAN WHO UPON THE REQUEST OF CECILE CHARTRAND, INDICATED THE ADDRESS TO WHICH THE STATEMENT OF DESIRE WAS TO BE MAILED. AT NO TIME WAS IT EVER SUGGESTED BY MR. SCHULMAN THAT THE COMMITTEE RETAIN THE SERVICES OF AN INDEPENDENT LEGAL ADISER.

7. IN SUPPORT OF ITS CHARGES THE APPLICANT ADDUCED EVIDENCE FROM CECILE CHARTRAND, DONNA RUSSELL AND SIMONE RAMSAY ALL OF WHOM WERE EMPLOYEES OF THE RESPONDENT AT THE RELEVANT TIMES.

8. CECILE CHARTRAND'S VERSION OF MR. SCHULMAN'S INITIAL ADDRESS TO THE EMPLOYEES ON THE MORNING OF MARCH 10, 1972, IS TO THE EFFECT

THAT "HE HAD HEARD RUMOURS THAT THERE WAS A UNION TRYING TO GET IN. IF THE UNION GOT IN, HE WOULD CLOSE THE PLANT. IT WOULD TAKE ABOUT FOUR HOURS TO MOVE THE MACHINES BACK TO MONTREAL IF THE UNION CAME IN." DURING THE DISCUSSIONS WHICH FOLLOWED, THE WITNESS STATED THAT SHE HAD ASKED IF THEY COULD DELAY THE VOTE WHICH HE PROPOSED UNTIL THE FOLLOWING MONDAY AS SHE FELT THAT THE EMPLOYEES SHOULD HAVE THE WEEK-END TO THINK THE MATTER OVER. HOWEVER, IN HER OPINION, MR. SCHULMAN WAS ADAMANT IN HIS POSITION THAT THE VOTE BE HELD THAT VERY MORNING AS MR. STOCKS, THE OWNER, WANTED TO HAVE AN ANSWER BY 4:00 P.M. OF THAT SAME DAY. WHEN PRESSED ON THIS POINT ON CROSS-EXAMINATION, SHE STATED: "WE JUST DIDN'T GET THE TIME. EVERYTHING HAD TO BE DONE ON THAT DAY. WE ALL WANTED A UNION UNTIL WE GOT OUR MINDS CHANGED." FOLLOWING THE TAKING OF THE LAST VOTE AND AT ABOUT 3:00 P.M. THAT SAME DAY, SHE STATED THAT SHE WAS SUMMONED TO MR. SCHULMAN'S OFFICE WHERE A DISCUSSION THEN ENSUED BETWEEN HERSELF, MR. SCHULMAN AND "A MAN FROM CITY HALL" CONCERNING HER UNION CARD. SHE TESTIFIED THAT SHE WAS INSTRUCTED AT THIS TIME TO LET THEM KNOW IF SHE HEARD ANYTHING FURTHER ABOUT THE UNION. AT THE MEETING HELD ON MARCH 17, 1972, SHE STATED THAT MR. SCHULMAN INFORMED THE COMMITTEE THAT HE WAS IN RECEIPT OF CORRESPONDENCE FROM THE DEPARTMENT OF LABOUR REQUESTING A STATEMENT FROM THE EMPLOYEES AS TO WHETHER OR NOT THEY WANTED A UNION. IT WAS AT THIS POINT, ACCORDING TO THE WITNESS THAT IT WAS "DECIDED" TO OPPOSE THE APPLICANT AND THE COMMITTEE THEN ATTEMPTED TO DRAFT A STATEMENT OF DESIRE IN THE CAFETERIA. WHEN THE COMMITTEE EXPERIENCED PROBLEMS IN THIS REGARD, THE WITNESS STATED THAT MR. SCHULMAN SOMEHOW SENSED THEIR DIFFICULTIES, WHICH ULTIMATELY RESULTED IN HER COPYING OUT THE STATEMENT THAT HE HAD RECEIVED FROM HIS LAWYER. ONCE THE SIGNATURES WERE OBTAINED ON THE STATEMENTS OF DESIRE SHE STATED THAT MR. SCHULMAN TOLD HER THAT SHE WOULD HAVE TO ATTEND A LABOUR BOARD HEARING IN TORONTO IN THIS REGARD. THE WITNESS FURTHER INDICATED THAT EMMA ROYER, THE FORELADY, INDICATED AT THE TIME THAT THE COMPANY WOULD PAY FOR THE TRIP.

9. THE EVIDENCE OF DONNA RUSSELL, DESCRIBED THE STATEMENTS MADE BY MR. SCHULMAN TO THE GIRLS ON THE MORNING OF MARCH 10, 1972, IN THE LUNCH ROOM, AS FOLLOWS: "HE SAID HE KNEW A UNION WAS TRYING TO GET IN AND HE DIDN'T WANT A UNION IN THE PLANT AND THAT IF A UNION GOT IN, HE WOULD HAVE TO CLOSE THE PLANT. HE SAID IT WOULD TAKE FOUR HOURS TO MOVE THE MACHINES BACK TO MONTREAL AND HE DIDN'T HAVE TO WORRY ABOUT A JOB ALONG WITH EMMA ROYER. HE SAID WE DIDN'T NEED A UNION AND THAT WHAT THEY COULD GIVE HE HAD ALREADY GAVE US." ALTHOUGH, IN HER OPINION, THE EMPLOYEES WOULD HAVE PREFERRED TO DELAY THEIR CHOICE AS TO WHETHER THEY WANTED A UNION, AND CONSIDER THE MATTER OVER THE WEEK-END, THEY WERE NEVERTHELESS, REQUIRED TO MAKE A "SNAP DECISION" AT THIS TIME. SHE FURTHER STATED THAT WHEN THE RESULTS OF THE VOTE INDICATED THAT THE GIRLS FAVOURED A COMMITTEE OVER A UNION, MR. SCHULMAN APPEARED RELIEVED. THE WITNESS FURTHER TESTIFIED TO THE EFFECT THAT SOMETIME IN APRIL OF 1972, SHE WAS CALLED INTO MR. SCHULMAN'S OFFICE AND QUESTIONED BY HIM AS REGARD A UNION MEETING WHICH WAS HELD PURSUANT TO A CURCULAR MAILED BY THE

APPLICANT. (EXHIBIT #1) WHEN SHE INDICATED TO HIM THAT ONLY ELEVEN GIRLS HAD ATTENDED THE MEETING, MR. SCHULMAN TOLD HER THAT THIS INDICATED THAT THE MAJORITY WERE OPPOSED TO THE UNION. IN REPLY, THE WITNESS STATED THAT "I TOLD HIM THE GIRLS WERE AFRAID TO GO TO THE MEETING BECAUSE YOU SAID THAT YOU WOULD CLOSE THE PLANT. WHEN I TOLD HIM THE GIRLS WERE NOT ALLOWED TO GIVE THEIR OPINIONS HE RAMPAGED AROUND." THE WITNESS INDICATED THAT SHE WAS REQUIRED TO REMAIN STANDING THROUGHOUT THE THREE AND ONE HALF HOUR PERIOD IN HIS OFFICE AND THAT THE COMMITTEE WAS CALLED IN AT ABOUT 11:00 A.M., WHEREUPON MR. SCHULMAN REQUESTED THAT "WE SHOULD GIVE HIM A CHANCE BEFORE TRYING A UNION." UPON CROSS-EXAMINATION, THE WITNESS WHO HAD ORIGINALLY SIGNED A MEMBERSHIP CARD IN THE APPLICANT, WAS ASKED WHY THEN DID SHE SIGN THE STATEMENT OF DESIRE. HER REPLY IN THIS REGARD WAS DIRECT - "IF WE DIDN'T SIGN, THE PLANT WOULD BE CLOSED. SO WE NEVER REALLY HAD A CHOICE, SO I SIGNED."

10. SIMONE RAMSAY'S EVIDENCE IS TO THE EFFECT THAT SHE SIGNED A CARD FOR MEMBERSHIP IN THE APPLICANT AND THAT SHE REFUSED OUTRIGHT TO PARTICIPATE IN ANY OF THE ELECTIONS ON MARCH 10, 1972. ACCORDINGLY, SHE ALONG WITH ANOTHER EMPLOYEE WAS SUMMONED TO MR. SCHULMAN'S OFFICE AND WAS ASKED BY HIM FOR AN EXPLANATION WHY SHE HAD NOT VOTED. SHE STATED THAT IT WAS FOR PERSONAL REASONS. UPON CROSS-EXAMINATION SHE TESTIFIED THAT THE RESULTS OF THE MARCH 10, 1972 VOTES WERE NOT REPRESENTATIVE OF THE DESIRES OF THE EMPLOYEES AS MR. SCHULMAN "HAD THE EMPLOYEES IN SUCH AN UPROAR THAT THEY DIDN'T KNOW WHAT THEY WERE SAYING" AND THAT NEVERTHELESS "NO ONE WOULD HAVE QUESTIONED THE ORDER OF THE DAY." SHE FURTHER STATED THAT ON MARCH 13, 1972, SHE WAS AGAIN CALLED INTO MR. SCHULMAN'S OFFICE AND IN THE PRESENCE OF THE COMMITTEE WAS INFORMED THAT "HE HAD RECEIVED COMPLAINTS ABOUT ME THAT I WAS TRYING TO TALK THE GIRLS INTO GOING BACK TO THE UNION. HE SAID HE COULD NOT HAVE THIS SORT OF STUFF GOING ON AND THAT HE WOULD ELIMINATE IT." HOWEVER, MR. SCHULMAN REFUSED TO PERMIT THE WITNESS TO QUESTION THE EMPLOYEES WHO HAD COMPLAINED TO HIM IN THIS REGARD AND FURTHER INDICATED THAT IT WAS UP TO THE COMMITTEE TO DECIDE WHAT THEY WERE GOING TO DO WITH HER. THE WITNESS FURTHER TESTIFIED THAT SHORTLY AFTER THIS MEETING SHE DECIDED TO QUIT BECAUSE, IN HER WORDS, "I KNOW HOW MR. SCHULMAN WORKS. HE WOULD HAVE EITHER LAID ME OFF OR FIRED ME."

11. IN DEFENCE TO THESE CHARGES, THE ONLY EVIDENCE ON BEHALF OF THE RESPONDENT WAS ADDUCED THROUGH MR. SCHULMAN HIMSELF. CLAUDETTE DORE AND PRISCILLA MARTIN GAVE EVIDENCE ON BEHALF OF THE GROUP OF OBJECTORS. A PERUSAL OF THEIR EVIDENCE REVEALS VARIOUS DIRECT CONFLICTS WITH THAT GIVEN BY THE APPLICANT'S WITNESSES.

12. THE EVIDENCE OF MR. SCHULMAN, OF THE RESPONDENT, IS TO THE EFFECT THAT HE WAS APPOINTED PLANT MANAGER OF THE RESPONDENT'S OPERATIONS IN CORNWALL FOLLOWING HIS TRANSFER FROM MONTREAL DURING THE FIRST OR SECOND WEEK IN FEBRUARY OF 1971. AT THIS TIME, HE TESTIFIED THAT RUMOURS HAD REACHED HIM INDICATING THAT "A UNION WAS ATTEMPTING TO COME IN". HE STATED FURTHER: "UPON HEARING OF THIS, I CALLED A

MEETING OF ALL THE GIRLS. I TOLD THEM THAT OUR COMPANY HAD NO OBJECTION TO A UNION COMING IN. HOWEVER, THE SHOP WAS THEN IN OPERATION ABOUT EIGHT MONTHS AND AT THE PRESENT TIME IT WAS NOT REALLY A "SHOP" IN THE SENSE THAT ALL OF THE GIRLS WERE IN THE PROCESS OF BEING TRAINED OR WERE NOT PRODUCING IN A WAY AN EXPERIENCED GIRL WOULD PRODUCE. THE COMPANY WAS INCURRING A FANTASTIC AMOUNT OF EXPENSES AT THIS TIME AND EVERYBODY WAS ON A TRIAL BASIS. TURNOVER WAS EXCEEDINGLY HIGH, AND THE COMPANY ITSELF, WHETHER THERE WAS A UNION OR NOT, WAS IN NO POSITION TO KNOW IF IT WAS GOING TO REMAIN IN CORNWALL." UPON CROSS-EXAMINATION, IN REPLY TO A QUESTION RELATING TO WHAT INTEREST HE HAD IN THE UNION AT THIS TIME, HE STATED THAT "I WAS CONCERNED BECAUSE I CAME TO CORNWALL TO SEE IF IT WAS FEASIBLE TO CONTINUE TO HAVE THE SHOP HERE." WHEN PRESSED ON THE POINT AS TO WHETHER THE PRESENCE OF A UNION WOULD INCUR HIGHER COSTS ON BEHALF OF THE RESPONDENT, HE STATED THAT IN LIGHT OF THE SLOW PRODUCTION AT THE TIME, HE INFORMED THE EMPLOYEES TO THE EFFECT THAT "LET'S FIRST WORK AND SEE IF WE HAVE A SHOP AND THEN SEE IF YOU WANT A UNION." AT THIS TIME HE ALSO INDICATED THAT THREE PERSONS WERE IN FACT PLACED ON LAY OFF. IN THIS REGARD, THE WITNESS FURTHER TESTIFIED THAT: "I COULDN'T BE RESPONSIBLE FOR MY PREDECESSOR. I SAID THAT UNTIL WE GET ON OUR FEET, IT WOULD BE A GOOD IDEA TO HAVE A COMMITTEE SO THAT THESE PEOPLE WOULD REPRESENT THEM IN DISCUSSING WITH ME THEIR PARTICULAR PROBLEMS." HE ALSO STATED THAT "WHEN I SPOKE TO THE GIRLS, I MADE IT CLEAR THAT THEY HAD A FREEDOM OF CHOICE, BUT I TOLD THEM THEY SHOULD KNOW THE FACTS."

13. THE WITNESS DENIED THE ALLEGATION THAT HE THREATENED TO REMOVE THE PLANT FROM THE CORNWALL AREA. THE TOPIC ACCORDING TO HIM, ONLY AROSE WHEN ONE OF THE EMPLOYEES INFORMED HIM THAT THE COMPANY COULD NOT LEAVE BECAUSE IT HAD RECEIVED AN ONTARIO GOVERNMENT GRANT. IN THIS REGARD, HE STATED THAT HE HELD A MEETING WITH THE GIRLS AND INFORMED THEM THAT ALTHOUGH THE RESPONDENT HAD RECEIVED A "TRAINING PROGRAM" SUBSIDY, IT HAD IN FACT BEEN EXHAUSTED AS OF APRIL 1972, AND ACCORDINGLY, THERE WAS NOTHING TO PREVENT THE COMPANY FROM LEAVING CORNWALL WITHIN FOUR HOURS IN THE EVENT IT PROVED UNECONOMICAL TO CONTINUE OPERATIONS HERE. FURTHER, HE DENIED ASKING CECIL CHARTRAND TO, IN EFFECT, SPY ON BEHALF OF MANAGEMENT DURING THE DISCUSSION HE HAD WITH HER AND AN INDIVIDUAL FROM THE INDUSTRIAL DEVELOPMENT COMMISSION WHOM HE HAD ASKED FOR ASSISTANCE IN THIS MATTER.

14. THE TESTIMONY OF THE WITNESS ALSO REVEALS THAT SHORTLY PRIOR TO THE POSTING OF THE FORM 5 NOTICE TO EMPLOYEES ON MARCH 17, 1972, THE WITNESS STATED THAT HE CALLED THE COMMITTEE INTO HIS OFFICE AND INFORMED THEM THAT "HE WAS PUTTING THE NOTICE UP ON THE BULLETIN BOARDS AND THAT I EXPECTED THEM TO READ IT. IN HIS WORDS, "I WENT OVER THE DETAILS WITH THE COMMITTEE SO THEY COULD UNDERSTAND IT. I SAID THAT IF THE GIRLS OBJECTED TO THE UNION THEY HAD THE RIGHT TO INDICATE THIS BY THEIR SIGNATURES. IN CONTRAST TO THE EVIDENCE OF CECILE CHARTRAND, CLAUDETTE DORE TESTIFIED THAT IT WAS THE COMMITTEE THAT APPROACHED MR. SCHULMAN FOR ASSISTANCE WHEN THEIR ATTEMPTS TO DRAFT THE STATEMENT OF DESIRE PROVED FUTILE. IN ANY EVENT MR. SCHUL-

MAN TESTIFIED THE HE WENT TO HIS "ATTORNEY" FOR ASSISTANCE IN INTERPRETING PARAGRAPH #5 OF THE NOTICE. HE STATED THAT THE "ATTORNEY" THEN PHYSICALLY WROTE OUT THE PROPOSED HEADING FOR THE DOCUMENT. THE WITNESS COULD NOT RECALL IF CECILE CHARTRAND REWROTE THE HEADING ON ANOTHER PIECE OF PAPER, BUT NEVERTHELESS STATED THAT HE OFFERED THE HANDWRITTEN DOCUMENT TO THE COMMITTEE MERELY AS A "SUGGESTION", UPON MEETING AGAIN WITH THEM APPROXIMATELY AN HOUR LATER.

15. MR. SCHULMAN'S EVIDENCE IS SUPPORTED IN SOME DEGREE BY CLAUDETTE DORE AND PRISCILLA MARTIN. NEVERTHELESS, VIEWING HIS TESTIMONY AS A WHOLE, WE WERE STRUCK WITH HIS INABILITY TO RECALL CERTAIN SITUATIONS ESPECIALLY AS REGARDS THE TIMING OF THE MEETINGS HE HAD WITH EMPLOYEES AT THE TIME OF POSTING THE NOTICE TO THE EMPLOYEES OF THIS APPLICATION. FURTHER, MR. SCHULMAN, IN KEEPING WITH THE BOARD PRACTICE OF ALLOWING ONE WITNESS TO REMAIN IN THE HEARING ROOM FOR PURPOSES OF INSTRUCTING HIS COUNSEL FOLLOWING AN ORDER OF THE BOARD EXCLUDING WITNESSES, HEARD ALL OF THE TESTIMONY OF THE WITNESSES OF THE APPLICANT AT THE INITIAL HEARING OF THIS MATTER ON JUNE 1, 1972. HIS EVIDENCE WAS NOT TAKEN BEFORE US UNTIL JULY 27TH, 1972. WE FIND IT DIFFICULT TO UNDERSTAND THEREFORE WHY HE DID NOT AT LEAST, ENDEAVOUR (AND WE HAVE NO EVIDENCE TO THIS EFFECT), TO REFRESH HIS MEMORY ON THE ITEMS RAISED AT THE PREVIOUS HEARING. ON THE OTHER HAND, WE FIND THAT THE EVIDENCE ELICITED FROM THE WITNESSES CALLED BY THE APPLICANT WAS GIVEN IN A STRAIGHT-FORWARD, CLEAR, FRANK AND LUCID MANNER. WE WERE PARTICULARLY IMPRESSED BY THE TESTIMONY OF SIMONE RAMSAY, THE MOST SENIOR EMPLOYEE WITH THE RESPONDENT AT THE RELEVANT TIMES AND A PERSON, WE FIND, OF SOME EXPERIENCE AND MATURITY. ACCORDINGLY HAVING REGARD TO THESE CONSIDERATIONS, WHERE THERE IS A CONFLICT IN EVIDENCE AS PRESENTED BEFORE US, WE PREFER THE TESTIMONY ADDUCED FROM THE APPLICANT TO THE EVIDENCE ELICITED FROM EITHER THE RESPONDENT OR THE OBJECTORS.

16. SECTION 7(4) OF THE ACT PROVIDES AS FOLLOWS:

"IF THE BOARD IS SATISFIED THAT MORE THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION AND THAT THE TRUE WISHES OF THE EMPLOYEES ARE NOT LIKELY TO BE DISCLOSED BY A REPRESENTATION VOTE, THE BOARD MAY CERTIFY THE TRADE UNION AS BARGAINING AGENT WITHOUT TAKING A REPRESENTATION VOTE."

(UNDERLINING ADDED)

IN THIS REGARD, REFERENCE SHOULD BE HAD TO THE PIGOTT MOTORS (1961) LIMITED CASE CLLC VOL. 2, 1960 - 1964, ARTICLE 16,264 AT PAGE 1130 WHERE THE BOARD STATED:

"IN VIEW OF THE RESPONSIVE NATURE OF HIS RELATIONSHIP WITH HIS EMPLOYER, AND OF HIS NATURAL DESIRE TO WANT TO APPEAR TO IDENTIFY

HIMSELF WITH THE INTERESTS AND WISHES OF HIS EMPLOYER, AN EMPLOYEE IS OBVIOUSLY PECULIARLY VULNERABLE TO INFLUENCES, OBVIOUS OR DEVIOUS, WHICH MAY OPERATE TO IMPAIR OR DESTROY THE FREE EXERCISE OF HIS RIGHTS UNDER THE ACT."

17. ON THE OTHER HAND, SECTION 56 OF THE ACT, PROVIDES:

"NO EMPLOYER...SHALL INTERFERE WITH THE FORMATION, SELECTION OR ADMINISTRATION OF A TRADE UNION, BUT NOTHING IN THIS SECTION SHALL BE DEEMED TO DEPRIVE AN EMPLOYER OF HIS FREEDOM TO EXPRESS HIS VIEWS SO LONG AS HE DOES NOT USE COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE."

AS REGARDS THE RIGHTS OF AN EMPLOYER TO EXPRESS HIS VIEWS, THE BOARD IN THE BELL & HOWELL CANADA LIMITED CASE ADOPTED THE LANGUAGE OF THE CANADA LABOUR RELATIONS BOARD IN THE TAGGART SERVICE LIMITED CASE (1964) C.L.L.R. TRANSFER BINDER 64-66, ARTICLE 16,015, P. 13,055, WHICH WAS STATED AS FOLLOWS:

"AN EMPLOYER MAY EXPRESS HIS VIEWS AND GIVE FACTS IN APPROPRIATE MANNER AND CIRCUMSTANCES ON THE ISSUES INVOLVED IN REPRESENTATION PROCEEDINGS IN SO FAR AS THESE DIRECTLY AFFECT HIM AND HAS THE RIGHT TO MAKE APPROPRIATE REPLY TO PROPAGANDA DIRECTED AGAINST HIM IN RELATION THERETO. HOWEVER HE SHOULD BEAR IN MIND IN SO DOING THE FORCE AND WEIGHT WHICH SUCH EXPRESSIONS OF VIEWS MAY HAVE UPON THE MINDS OF HIS EMPLOYEES AND WHICH DERIVE FROM THE NATURE AND EXTENT OF HIS AUTHORITY AS EMPLOYER OVER HIS EMPLOYEES WITH RESPECT TO THEIR WAGES, WORKING CONDITIONS AND CONTINUITY OF EMPLOYMENT. HE SHOULD TAKE CARE THAT SUCH EXPRESSIONS OF VIEWS DO NOT CONSTITUTE AND MAY NOT BE REASONABLY CONSTRUED BY HIS EMPLOYEES TO BE AN ATTEMPT BY MEANS OF INTIMIDATION, THREATS, OR OTHER MEANS OF COERCION TO INTERFERE WITH THEIR FREEDOM TO JOIN A TRADE UNION OF THEIR CHOICE OR TO OTHERWISE SELECT A BARGAINING AGENT OF THEIR OWN CHOICE."

18. REDUCED TO ITS ESSENTIALS, THE QUESTION THEREFORE BEFORE THIS BOARD IS TO DETERMINE WHETHER, HAVING REGARD TO ALL OF THE CIRCUMSTANCES, THE ACTIONS OF MR. SCHULMAN ON BEHALF OF THE RESPONDENT, EXCEEDED THE LIMITS OF HIS RIGHT TO EXPRESS HIS VIEWS PURSUANT TO SECTION 56 OF THE ACT, SUCH THAT HIS ACTIONS, IN EFFECT, OVERFLOWED INTO THE AMBIT AND PURVIEW OF SECTION 7(4) OF THE ACT, WHEREBY ANY REPRESENTATION VOTE, WHICH WOULD NORMALLY BE ORDERED BY THIS BOARD, HAVING REGARD TO THE COUNT, WOULD NOT LIKELY DISCLOSE THE TRUE WISHES OF THE EMPLOYEES THEREIN.

19. HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE IN THIS REGARD, WHICH WAS EXTENSIVE, WE HAVE NO HESITATION IN FINDING THAT MR. SCHULMAN IN HIS OVERZEALOUSNESS TO MAKE THE OPERATIONS OF THE RESPONDENT AT CORNWALL A SUCCESSFUL ENTERPRISE, TRANSGRESSED THE LEGITIMATE BOUNDS OF FREE EXPRESSION PERMITTED HIM, AND IN SO DOING, VIRTUALLY DESTROYED THE ABILITY OF THE EMPLOYEES TO MAKE A FREE CHOICE IN THE MATTER. ACCORDINGLY, WE FIND THAT A REPRESENTATION VOTE IS NOT LIKELY IN THESE CIRCUMSTANCES, TO DISCLOSE THE TRUE WISHES OF THE EMPLOYEES.

20. THE BOARD THEREFORE, IN THE EXERCISE OF ITS DISCRETION UNDER THE PROVISIONS OF SECTION 7(4) OF THE ACT, FINDS THAT THE APPLICANT HAS ESTABLISHED ITS ENTITLEMENT TO OUTRIGHT CERTIFICATION WITHOUT THE TAKING OF A REPRESENTATION VOTE.

21. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J. D. BELL: AUGUST 15, 1972.

1. I DO NOT AGREE THAT THE ACTIONS OF THE RESPONDENT WERE OF SUCH A NATURE THAT A REPRESENTATION VOTE WOULD NOT BE LIKELY TO DISCLOSE THE TRUE WISHES OF THE EMPLOYEES.

2. THE ACTIONS OF MR. SCHULMAN, IN HIS ZEALOUSNESS TO MAKE THIS NEW OPERATION A SUCCESSFUL AND CONTINUING ENTERPRISE, MAY HAVE EXCEEDED THE NARROW BOUNDS OF FREE EXPRESSION ALLOWED. HOWEVER, IN MY OPINION, THESE ACTIONS HAVE NOT DESTROYED THE ABILITY OF THE EMPLOYEES TO MAKE INDEPENDENT DECISIONS IN THIS IMPORTANT MATTER OF REPRESENTATION.

3. ACCORDINGLY, I WOULD DIRECT THAT A REPRESENTATION VOTE BE CONDUCTED TO DETERMINE THEIR TRUE WISHES.

2230-72-R: THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. PATIDA SERVICES LTD. (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS A. MAIN AND W. H. WIGHTMAN.

APPEARANCES AT THE HEARING: PAUL A. ROBINSON AND FRANK GRELLA FOR THE APPLICANT; P. D. MILNE AND A. A. PATERSON FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 22, 1972.

1. THE NAME "THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261, A.F.L.-C.I.O.-C.L.C., 1091 WELLINGTON STREET, OTTAWA, ONTARIO" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE APPLICANT IS AMENDED TO READ: "THE HOTELS, CLUBS, REST-

AURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261, A.F.L.-C.I.O.-C.L.C."

2. THE NAME "A. & W. DRIVE-IN RESTAURANT, 660 PEMBROKE STREET EAST, PEMBROKE, ONTARIO" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "PATIDA SERVICES LTD."

3. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT PROPOSED A BARGAINING UNIT COMPRISING "ALL EMPLOYEES FULL AND PART TIME OF THE RESPONDENT" WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

4. BY WAY OF REPLY TO APPLICATION, THE RESPONDENT PROPOSED A BARGAINING UNIT DESCRIBED AS COMPRISING "ALL EMPLOYEES OF THE RESPONDENT, PATIDA SERVICES LTD, AT PEMBROKE, SAVE AND EXCEPT MANAGERS THOSE ABOVE THE RANK OF MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD". THERE WAS NO DOUBT THAT STUDENTS AND PERSONS WORKING NOT MORE THAN 24 HOURS PER WEEK WERE, IN FACT, EMPLOYED BY THE RESPONDENT.

5. AT THE HEARING, THE RESPONDENT DID NOT OPPOSE THE INDICATION GIVEN BY THE BOARD THAT IT WOULD FOLLOW ITS CUSTOMARY PRACTICE IN SIMILAR CIRCUMSTANCES OF DIVIDING THE EMPLOYEES INTO TWO APPROPRIATE UNITS. ONE UNIT WOULD CONSIST OF FULL-TIME EMPLOYEES AND THE OTHER OF PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD. THE APPLICANT PRESSED FOR AN ALL EMPLOYEE UNIT.

6. THE RESPONDENT THEN ARGUED, HOWEVER, THAT NOTWITHSTANDING WHAT MIGHT BE THE SITUATION WITH RESPECT TO MEMBERSHIP EVIDENCE, THE BOARD OUGHT NOT ISSUE CERTIFICATES FOR TWO UNITS ON THE GROUNDS THAT THE EMPLOYEES CONCERNED HAD NOT RECEIVED PROPER AND ADEQUATE NOTICE OF THE FACT THAT A BARGAINING UNIT OF A KIND OTHER THAN THAT SET OUT IN THE BOARD'S NOTICE OF THE APPLICATION POSTED IN THE PREMISES OF THE RESPONDENT MIGHT BE ESTABLISHED.

7. THE NOTICE TO WHICH THE RESPONDENT REFERS IS, FORM 5 ENTITLED NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND OF HEARING, THE RELEVANT PORTIONS OF WHICH ARE AS FOLLOWS:

"TO THE EMPLOYEES OF A. & W. DRIVE-IN RESTAURANT,
660 PEMBROKE STREET EAST,
PEMBROKE, ONTARIO.

1. TAKE NOTICE THAT THE APPLICANT, ON JULY 4TH, 1972, MADE AN APPLICATION TO THE ONTARIO LABOUR RELATIONS BOARD FOR CERTIFICATION AS BARGAINING AGENT OF EMPLOYEES OF A. & W. DRIVE-IN RESTAURANT, 660 PEMBROKE IN THE FOLLOWING BARGAINING UNIT:

5. ANY EMPLOYEE OR GROUP OF EMPLOYEES AFFECTED BY THE APPLICATION AND DESIRING TO MAKE REPRESENTATIONS TO THE BOARD IN OPPOSITION TO THIS APPLICATION MUST SEND TO THE BOARD A STATEMENT IN WRITING OF SUCH DESIRE, WHICH SHALL, ETC. ETC.

7. A STATEMENT OF DESIRE THAT DOES NOT COMPLY WITH PARAGRAPHS 5 AND 6 WILL NOT BE ACCEPTED BY THE BOARD.

8. ANY EMPLOYEE, OR GROUP OF EMPLOYEES, WHO HAS INFORMED THE BOARD IN WRITING OF HIS OR THEIR DESIRE IN ACCORDANCE WITH PARAGRAPHS 5 AND 6 MAY ATTEND AND BE HEARD AT THE HEARING IN PERSON OR BY A REPRESENTATIVE. ANY EMPLOYEE OR REPRESENTATIVE WHO APPEARS AT THE HEARING WILL BE REQUIRED TO TESTIFY, OR PRODUCE A WITNESS OR WITNESSES WHO WILL BE ABLE TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION, AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED, AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED."

8. THE RESPONDENT EMPHASIZED THAT THE NOTICE DIRECTS THE ATTENTION OF THE EMPLOYEES TO THE FACT THAT AN APPLICATION FOR CERTIFICATION HAS BEEN MADE "IN THE FOLLOWING BARGAINING UNIT", AND THEN SETS OUT ONLY THE DESCRIPTION OF THE UNIT FOR WHICH THE APPLICANT SEEKS TO BE CERTIFIED.

9. THE RESPONDENT MAINTAINS THAT EMPLOYEES READING THE NOTICE WOULD BE AWARE THAT IF AN EMPLOYEE OBJECTED TO THE APPLICATION ITSELF OR TO THE BARGAINING UNIT PROPOSED THEREIN, THE EMPLOYEE COULD TAKE THE STEPS SET OUT IN THE NOTICE TO OPPOSE THE APPLICATION. THE RESPONDENT FURTHER ARGUED, HOWEVER, THAT AN EMPLOYEE WHO WAS CONTENT WITH THE UNIT AS PROPOSED IN THE NOTICE, WOULD BE DENIED AN OPPORTUNITY TO EXPRESS HIS OPPOSITION, IF ANY, TO ANY DIFFERENT BARGAINING UNIT SHOULD THE BOARD FIND SUCH TO BE APPROPRIATE AT THE HEARING. IT WAS CONTENDED THAT THE PROVISIONS SET OUT IN FORM 5, WHEREBY AN EMPLOYEE AFFECTED BY THE APPLICATION MIGHT EXPRESS HIS OPPOSITION, WERE SPECIFICALLY DIRECTED TOWARD "THIS APPLICATION" WHICH, OF COURSE, AS NOTED, INCLUDES ONLY ONE PROPOSED BARGAINING UNIT.

10. FOR THE FOREGOING REASONS, THE RESPONDENT SUBMITTED THAT, IN THE INTERESTS OF NATURAL JUSTICE, NOTICE OUGHT TO BE GIVEN TO THE EMPLOYEES OF ANY PROPOSED CHANGED IN THE BARGAINING UNIT AS SET OUT IN THE APPLICATION BEFORE A CERTIFICATION CONCERNING A DIFFERENT UNIT IS ISSUED. THE ALTERATION OF THE DESCRIPTION OF THE BARGAINING UNIT, THE RESPONDENT SAID, WAS A MATTER AFFECTING THE INTERESTS OF THE EMPLOYEES CONCERNING WHICH THEY WERE ENTITLED TO HAVE ADEQUATE NOTICE.

11. THE BOARD HAS CAREFULLY CONSIDERED ALL OF THE ARGUMENT OF THE RESPONDENT. IN THE OPINION OF THE BOARD, THE NOTICE TO EMPLOYEES CONSTITUTES ADEQUATE NOTICE THAT AN APPLICATION FOR CERTIFICATION HAS BEEN MADE AND THAT THEY MAY OBJECT PROVIDED THEY FOLLOW THE METHODS SET OUT IN THE NOTICE.

12. THE NOTICE CLEARLY INDICATES THAT THE APPLICATION IS MADE UNDER THE LABOUR RELATIONS ACT. IT GOES WITHOUT SAYING THAT IT IS NOT NECESSARY TO REPRODUCE THE ACT IN THE NOTICE IN ORDER TO ENSURE THAT ALL CONCERNED ARE FAMILIAR WITH ITS PROVISIONS AND THEIR RIGHTS THEREUNDER. THESE ARE ASCERTAINABLE FROM A READING OF THE ACT TO WHICH THE NOTICE HAS DRAWN THEIR ATTENTION.

13. THE NOTICE, IN THE PRESENT CASE, PROPERLY INFORMED THE EMPLOYEES CONCERNED THAT AN APPLICATION FOR CERTIFICATION HAD BEEN MADE UNDER THE LABOUR RELATIONS ACT. IN OUR OPINION, THIS WAS SUFFICIENT AND ADEQUATE NOTICE OF THE FACT THAT THEIR INTERESTS WERE BEING AFFECTED IN ACCORDANCE WITH ALL THE PROVISIONS OF THE ACT, AMONG WHICH IS SECTION 6(1), WHICH PROVIDES THAT THE DETERMINATION OF THE APPROPRIATE BARGAINING UNIT IS A MATTER FOR THE BOARD AND IS THEREFORE NOT DETERMINED BY WHAT MAY BE SOUGHT IN THE APPLICATION.

14. IN ARRIVING AT THE FOREGOING, WE HAVE NOT OVERLOOKED THAT THE RESPONDENT MADE REFERENCE TO THE SUNNYBROOK FOOD MARKET (KEELE) LIMITED CASE, [1972] OLRB REP. FEBRUARY, P. 165, IN SUPPORT OF ITS ARGUMENT. IN THE PARTICULAR CIRCUMSTANCES OF THAT CASE THE BOARD, IN AN INTERIM DECISION INVOLVING A PRE-EXISTENT BARGAINING UNIT DEFINED IN A COLLECTIVE AGREEMENT, AN INCUMBENT UNION AND A GROUP OF EMPLOYEES OBJECTORS, FOUND THAT ALTERATION OF THE PROPOSED UNIT WAS PREJUDICIAL TO THE RESPONDENT AND POSSIBLY TO THE INTERVENER. IN THE PRESENT CASE, HOWEVER, IT WAS NOT ARGUED THAT THE POSITION OF THE RESPONDENT MIGHT BE PREJUDICED NOR DO WE BELIEVE SUCH AN ARGUMENT WOULD PREVAIL IN THE CIRCUMSTANCES OF THE PRESENT CASE. IT REMAINS OPEN, OF COURSE, FOR ANY EFFECTED EMPLOYEE TO REQUEST THE BOARD, FOR PROPER CAUSE, TO RECONSIDER, VARY OR REVOKE ITS DECISION.

. . .

21. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO BARGAINING UNIT #2.

1671-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. ZEHR'S MARKETS LIMITED (RESPONDENT) V. DIAMOND "Z" ASSOCIATION (INTERVENER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS F.W. MURRAY AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: CLIFFORD EVANS AND HAROLD JURCHUK FOR THE APPLICANT; W. GIBSON GRAY, Q.C., VERN BARNETT AND HERBERT HARTMAN FOR THE RESPONDENT; M.J. VILLEMAIRE FOR THE INTERVENER.

DECISION OF THE BOARD:

August 23, 1972.

1. THE APPLICANT SEEKS A BARGAINING UNIT COMPOSED OF ALL PERSONS EMPLOYED IN THE WAREHOUSE OPERATIONS OF THE RESPONDENT WITH CERTAIN EXCEPTIONS THAT ARE NOT MATERIAL. IMMEDIATELY PRIOR TO THE MAKING OF THIS APPLICATION THE INTERVENER MADE AN APPLICATION IN WHICH IT SOUGHT TO BE CERTIFIED FOR ALL THE EMPLOYEES OF THE RESPONDENT. ON BEING NOTIFIED OF THIS APPLICATION THE INTERVENER FILED AN INTERVENTION WHICH STATED INTER ALIA THAT IT WOULD BE PREMATURE TO ALLOW THE APPLICANT, RETAIL CLERKS INTERNATIONAL ASSOCIATION (HEREINAFTER REFERRED TO AS RETAIL CLERKS), TO OBTAIN CERTIFICATION UNTIL THE BOARD HAD THE OPPORTUNITY TO CONSIDER THE PRIOR APPLICATION OF THE INTERVENER "WHICH APPLICATION INCLUDES THE EMPLOYEES WHICH ARE THE SUBJECT OF THE RETAIL CLERKS APPLICATION".

2. BOTH MATTERS WERE LISTED FOR HEARING AT THE SAME TIME AND THE BOARD RESERVED ITS DECISION WITH RESPECT TO BOTH APPLICATIONS. SUBSEQUENT TO THE HEARING THE BOARD ISSUED DECISIONS IN BOTH CASES. THE APPLICATION BY THE INTERVENER WAS DISMISSED ON THE BASIS OF IMPROPRIETIES IN THE MEMBERSHIP EVIDENCE AND IN THIS APPLICATION AN EXAMINER WAS APPOINTED TO INQUIRE INTO THE BARGAINING UNIT.

3. AT THE MEETING OF THE EXAMINER IN THIS APPLICATION THE RETAIL CLERKS OBJECTED TO THE INTERVENER APPEARING ON THE BASIS THAT IT HAD NOT STATUS IN THIS APPLICATION. THE RETAIL CLERKS ALLEGED THAT SINCE THE INTERVENER'S APPLICATION FOR CERTIFICATION HAD BEEN DISMISSED ON THE BASIS OF IMPROPER MEMBERSHIP EVIDENCE, THAT THEY DID NOT REPRESENT EMPLOYEES IN THE BARGAINING UNIT WHICH WAS THE SUBJECT OF THIS APPLICATION AND THAT THEY THEREFORE WERE NOT ENTITLED TO ATTEND AT THE MEETING OF THE EXAMINER TO MAKE REPRESENTATIONS WITH RESPECT TO THE MATTERS AT ISSUE. ACCORDINGLY, THE MATTER WAS LISTED FOR HEARING TO HEAR ARGUMENT BY THE PARTIES.

4. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES WE ARE OF THE OPINION THAT AT THE TIME THE APPLICATION WAS MADE THE INTERVENER WAS A TRADE UNION WHOSE POSITION WAS AFFECTED BY THIS APPLICATION. AT THE FIRST HEARING THE STATUS OF THE INTERVENER TO APPEAR IN THIS PARTICULAR APPLICATION WAS NOT CHALLENGED. SINCE THE INTERVENER PARTICIPATED AT THE COMMENCEMENT OF THESE PROCEEDINGS WITHOUT OBJECTION WE ARE NOT PREPARED TO PROHIBIT ITS FURTHER PARTICIPATION AT THIS STAGE OF THE PROCEEDINGS. ACCORDINGLY, THE REQUEST OF THE APPLICANT TO PREVENT THE INTERVENER APPEARING AT THE MEETING OF THE EXAMINER IS DENIED.

2062-72-U: PETER VERMIST AND ROMAN PRYBYTKIVSKY (COMPLAINANTS) V. UAW LOCAL 1408 AND GENERAL IMPACT EXTRUSIONS (MFG) LTD. (RESPONDENTS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: PETER VERMIST AND ROMAN PRYBYTKIVSKY FOR THE COMPLAINANTS; A. C. SUTHERLAND, N. BLACK AND B. M. W. PAULIN, Q.C. FOR THE RESPONDENTS.

DECISION OF THE BOARD: August 24, 1972.

1. THIS IS A COMPLAINT FILED UNDER THE PROVISIONS OF SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANTS ALLEGE THAT THEY HAVE BEEN DEALT WITH BY THE RESPONDENTS CONTRARY TO THE PROVISIONS OF SECTION 60 OF THE SAID ACT.

2. THE FACTS WHICH ARE NOT IN DISPUTE ARE ESSENTIALLY AS FOLLOWS: IN NOVEMBER OF 1971, WHILE THE TWO NAMED RESPONDENTS WERE ENGAGED IN CONCILIATION PROCEEDINGS, A SCARCITY OF WORK DEVELOPED NECESSITATING LAY-OFFS. AN ISSUE AROSE AT THIS POINT BETWEEN THESE PARTIES CONCERNING THE INTERPRETATION OF ARTICLE 12(B) OF THE FORMER COLLECTIVE AGREEMENT WHICH TERMS CONTINUED IN EFFECT AT THIS TIME. THE COMPANY TOOK THE POSITION THAT ON THE BASIS OF STRAIGHT SENIORITY, THE COMMITTEEMAN WOULD HAVE TO BE BUMPED BY THE COMPLAINANT VERMIST, THE MORE SENIOR EMPLOYEE. THE RESULTANT VACANCY, IN TURN, WOULD HAVE BEEN FILLED, AGAIN ON THE BASIS OF STRAIGHT SENIORITY, BY THE COMPLAINANT PRYBYTKIVSKY. THIS INTERPRETATION OF THE AGREEMENT WOULD HAVE THEREFORE RESULTED IN THE LAY-OFF OF THE COMMITTEEMAN WHO HAD LESS SENIORITY THAN THE TWO COMPLAINANTS. THE UNION, ON THE OTHER HAND, MAINTAINED THAT THE COMMITTEEMAN SHOULD BE RETAINED ON THE BASIS OF SUPERSENIORITY. A GRIEVANCE WAS FILED IN THIS REGARD AND PRESSED VIGOROUSLY BY THE UNION. HOWEVER, IN AN EFFORT TO RESOLVE THEIR DIFFERENCES AND EFFECT A SETTLEMENT AT CONCILIATION, THE PARTIES REACHED AGREEMENT THAT THE COMMITTEEMAN BE RESTORED TO HIS JOB, WITHOUT PREJUDICE TO THE COMPANY'S POSITION ON THE GRIEVANCE AT ARBITRATION. IN THIS REGARD, THE UNION FURTHER AGREED TO HOLD THE COMPANY BLAMELESS FOR ANY LOSS OF WAGES BY ANY EMPLOYEE SO AFFECTED AND TO ALLOW NO GRIEVANCE ON THE MATTER. THE SUBSEQUENT ARBITRATION AWARD ON MAY 5, 1972, WAS IN FAVOUR OF THE COMPANY'S INTERPRETATION. IT WAS ON THE BASIS OF THIS AGREEMENT THAT THE COMPANY REFUSED TO ENTERTAIN A POLICY GRIEVANCE SUBSEQUENTLY FILED ON BEHALF OF THE COMPLAINANTS, WHICH ALLEGED, IN EFFECT, VIOLATION OF THE COLLECTIVE AGREEMENT FOR FAILURE ON THE PART OF THE COMPANY TO ACCEPT THEIR INDIVIDUAL GRIEVANCES CONCERNING IMPROPER LAY-OFF. THE UNION DID NOT PROCEED FURTHER WITH THIS POLICY GRIEVANCE.

3. AT THE OUTSET OF THESE PROCEEDINGS, THE REPRESENTATIVE FOR THE RESPONDENT UNION RAISED A PRELIMINARY OBJECTION TO THE

BOARD ENTERTAINING THE COMPLAINT ON THE BASIS THAT THERE IS COMPLETE AND AMPLE MACHINERY FOR APPEALS BUILT INTO THE CONSTITUTION OF THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA AS ADOPTED AT ATLANTIC CITY, N.J. APRIL, 1970 (FILED AS EXHIBIT #1 IN THESE PROCEEDINGS). SUCH MACHINERY, IT WAS ARGUED, MAY BE UTILIZED BY ANY MEMBER WHO MAY FIND HIMSELF IN DISAGREEMENT WITH THE DECISION OF HIS ELECTED REPRESENTATIVE.

4. IN THIS REGARD, IT WAS SUBMITTED THAT THE "EXHAUSTION RULE" AS DEFINED BY SMITH J. OF THE MANITOBA COURT OF QUEEN'S BENCH, IN ANDERSON ET AL V. AMALGAMATED CLOTHING WORKERS OF AMERICA ET AL 67 CLLC ARTICLE 14,015, IS APPLICABLE, WHERE AT PAGE 65, HE STATED:

"I HAVE READ AND CONSIDERED AMONG OTHERS, THE FOLLOWING AUTHORITIES CITED TO ME IN HIS VERY THOROUGH ARGUMENT BY COUNSEL FOR THE PLAINTIFFS CONCERNING THE EXHAUSTION RULE AND THE EXCEPTIONS TO ITS APPLICATION:

CARROTHERS - COLLECTIVE BARGAINING IN CANADA, PART IV
KUZYCH V. WHITE (1951) 2 W.W.R. (N.S.) 679 (IN THE PRIVY COUNCIL)
TUNNEY V. ORCHARD ET AL (1955) 15 W.W.R. 57 (MANITOBA COURT OF APPEAL); (1957) S.C.R. 436 (SUPREME COURT OF CANADA)
ANNAMUNTHODO V. OILFIELDS WORKERS' TRADE UNION (1961) A.C. 945
GEE V. FREEMAN (1958) 26 W.W.R. 546 (A B. C. CASE)
LEE V. SHOWMEN'S GUILD OF GREAT BRITAIN (1952) 2 Q.B. 329

AS I UNDERSTAND PROFESSOR CARROTHER'S ANALYSIS OF THE LAW, AND IN ACCORDANCE WITH MY UNDERSTANDING OF THE JUDGMENTS IN THE FOREGOING CASES AND OF THE FACTS AND CIRCUMSTANCES OF THIS CASE AS OUTLINED ABOVE, THESE AUTHORITIES SUPPORT THE CONCLUSION I HAVE REACHED, VIZ: THAT THE PLAINTIFFS SHOULD HAVE EXHAUSTED THE REMEDIES AVAILABLE TO THEM UNDER THE CONSTITUTION OF THE INTERNATIONAL, AT LEAST TO THE EXTEND OF AN APPEAL TO THE GENERAL EXECUTIVE BOARD, BEFORE SEEKING RELIEF THROUGH THE COURTS. IN MY VIEW THIS CASE DOES NOT FALL WITHIN ANY OF THE ESTABLISHED EXCEPTIONS TO THE EXHAUSTION RULE."

5. THE PROPRIETY OF THE BOARD ITSELF ADOPTED SUCH A RULE WAS DISCUSSED BY THE BOARD IN THE CANADIAN TEXTILE AND CHEMICAL UNION CASE, [1971] OLRB REP. AUGUST, P. 469, WHERE AT PAGE 470, APPEARS THE FOLLOWING:

"THE SUBJECT MATTER BEFORE THE COURTS IS VERY EXTENSIVE AND COVERS A WIDE RANGE OF MATTERS. INITIALLY, WE NOTED THAT THE COURTS HAVE TAKEN JURISDICTION IN A NUMBER OF INSTANCES. SEE CARROTHERS, COLLECTIVE BARGAINING LAW IN CANADA, PAGES 527 TO 541. ISSUES OF COLLECTIVE BARGAINING OR LABOUR RELATIONS ARE ONLY A SMALL PART OF THE COURTS BROAD AND GENERAL JURISDICTION. THIS BOARD, HOWEVER, HAS BEEN SPECIFICALLY DESIGNATED BY THE LEGISLATURE TO ENTERTAIN CERTAIN ISSUES CENTRAL TO COLLECTIVE BARGAINING AND THOSE ISSUES WHICH FIND EXPRESSION IN THE LABOUR RELATIONS ACT WHILE PERMITTING MATTERS OF INTERNAL TRADE UNION CONCERN ARE ALSO MATTERS OF PUBLIC POLICY WITH THE EXPECTATION BY THE LEGISLATURE THAT THIS TRIBUNAL IS THE MORE APPROPRIATE FORUM TO ADJUDICATE UPON THOSE ISSUES. WE ARE NOT PREPARED TO ACCEDE TO THE "CONTRACT THEORY", WHICH INDICATES THAT MEMBERS OF A TRADE UNION MAY HAVE CONTRACTED TO EXHAUST THEIR RIGHTS WITHIN THE INTERNAL TRADE UNION MACHINERY BEFORE RESORTING TO THIS BOARD WHERE THE ISSUE PRIMA FACIE INDICATES A VIOLATION OF PUBLIC POLICY."

NEVERTHELESS, THE BOARD WENT ON TO STATE:

"IN ARRIVING AT OUR CONCLUSION WE ARE NOT PREPARED TO SHUT THE DOOR COMPLETELY ON THE VIEW THAT MEMBERS OF A TRADE UNION MAY BE REQUIRED TO EXHAUST THEIR INTERNAL TRADE UNION MACHINERY BEFORE COMING TO THIS BOARD, NOR ARE WE PREPARED TO NOW DEFINE WHICH MATTERS WE MAY LEAVE TO THE INTERNAL UNION PROCEDURES. BUT, AT THE VERY LEAST, WHERE A TRADE UNION REQUESTS THIS BOARD TO PERMIT RESORT TO INTERNAL UNION PROCEDURES IT MUST PROVIDE SOME ASSURANCE THAT IT POSSESSES THE MACHINERY NECESSARY TO PROVIDE "DUE PROCESS" AND "NATURAL JUSTICE" TO THE PERSONS CONCERNED. THAT, TOO, IS A MATTER OF PUBLIC POLICY."

6. THE BOARD HAS CAREFULLY SCRUTINIZED THE SAID CONSTITUTION AS FILED AND, MORE PARTICULARLY, ARTICLE 33 AND IN NO MANNER DO WE FIND THE APPEAL MACHINERY AS SET OUT THEREIN, ILLUSORY. IN THIS REGARD WE ARE SATISFIED THAT IT POSSESSES THE MACHINERY NECESSARY TO PROVIDE "DUE PROCESS" AND "NATURAL JUSTICE" TO THE PERSONS CONCERNED. WITHOUT ATTEMPTING TO DEAL WITH THE SITUATION WHETHER A MEMBER BE REQUIRED TO EXHAUST FULLY THE STEPS OF THE APPEAL PROCEDURE WHICH IN THIS CASE WOULD EXTEND UP TO THE FINAL PUBLIC REVIEW BOARD LEVEL, THERE IS NO EVIDENCE BEFORE US THAT THE COMPLAINANTS HEREIN HAD MADE ANY ATTEMPT WHATSOEVER TO SEEK REDRESS UNDER THIS APPEAL MACHINERY PRIOR TO APPLYING TO THE BOARD FOR RELIEF UNDER SECTION 60 OF THE ACT. HAVING REGARD TO ALL OF THESE CIRCUMSTANCES, THEREFORE, WE ARE

NOT PREPARED TO ENTERTAIN THIS COMPLAINT FURTHER AND PROCEEDINGS AS AGAINST THE RESPONDENT UNION ARE ACCORDINGLY DISMISSED.

7. IN ANY EVENT, EVEN IF IT WERE NECESSARY TO DECIDE THIS CASE ON THE MERITS, THE COMPLAINANTS HAVE NOT ESTABLISHED UPON THE EVIDENCE THAT THE RESPONDENT UNION IN REFUSING TO FURTHER PROCESS THE POLICY GRIEVANCE, IN THESE CIRCUMSTANCES, ACTED IN A MANNER THAT WAS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH.

8. THE COMPLAINANTS NAMED THE EMPLOYER AS A RESPONDENT HEREIN NOTWITHSTANDING THE FACT THAT SECTION 60 OF THE ACT HAS REFERENCE ONLY TO THE UNION. IN ANY EVENT, WE FIND THAT THE RESPONDENT COMPANY IN THESE CIRCUMSTANCES, IS NOT IN BREACH OF ANY OF THE PROVISIONS OF THE ACT.

9. IN THE RESULT, THE COMPLAINT IS DISMISSED IN ITS ENTIRETY.

1910-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE COUNTY OF MIDDLESEX (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND O. HODGES.

DECISION OF THE BOARD: August 28, 1972.

1. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED JULY 14, 1972, IN THIS MATTER.

2. THE RESPONDENT SUBMITTED THAT PERSONS EMPLOYED AS SURVEY PARTY CHIEFS EXERCISED MANAGERIAL FUNCTIONS AND OUGHT THEREFORE TO BE EXCLUDED FROM THE BARGAINING UNIT. THE MATTER, AMONG OTHERS, WAS GONE INTO BY AN EXAMINER. THE PARTIES AGREED TO ACCEPT THE EVIDENCE OF JACK SMITH AS REPRESENTATIVE OF AND APPLICABLE TO DUTIES AND RESPONSIBILITIES OF ALL SURVEY PARTY CHIEFS EMPLOYED BY THE RESPONDENT.

3. THE EVIDENCE IN THE EXAMINER'S REPORT INDICATES THAT SMITH IS IN CHARGE OF A SURVEY CREW CONSISTING OF ONE CHAINMAN AND ONE RODMAN TO WHOM HE ASSIGNS WORK. HE SPENDS EIGHTY PER CENT OF HIS TIME WORKING WITH THE CREW. HE WAS ONCE CLASSIFIED AS SENIOR INSTRUMENT MAN AND CARRIES ON THE SAME DUTIES UNDER THE NEWER CLASSIFICATION OF SURVEY PARTY CHIEF AS HE DID UNDER THE FORMER CLASSIFICATION.

4. THE WITNESS IS NOT INVOLVED IN THE HIRING, FIRING OR LAY-OFF PROCESS AND TAKES NO PART IN MANAGEMENT MEETINGS. HE MEETS THE ASSISTANT ENGINEER ON MOST DAYS, BUT ONLY TO GET INSTRUCTIONS AS TO THE WORK TO BE DONE AND THE PRIORITIES INVOLVED.

5. WHEN ON A JOB, THE WITNESS CONTROLS THE WHOLE OPERATION. HE DIRECTS WHICH EMPLOYEE WILL DO WHAT ON THE JOB. HE HAS GIVEN EMPLOYEES VERBAL REPRIMANDS FOR NOT BEING ON TIME OR FOR NOT DOING WORK CORRECTLY. HE ONCE RECOMMENDED A PROMOTION AND ALSO A PAY INCREASE FOR EMPLOYEES. HE HAS THE AUTHORITY TO GRANT OR REFUSE A SHORT PERIOD OF TIME OFF. HE RECORDS THE TIME TAKEN ON THE TIME SHEET TOGETHER WITH THE REASON. TIME OFF FOR MEDICAL REASON IS PAID FOR BUT TIME OFF GRANTED TO START A WEEKEND EARLY IS NOT PAID FOR. THE WITNESS HAS GRANTED EMPLOYEES UP TO A DAY OFF. THE WITNESS'S EVIDENCE IS THAT IF AN EMPLOYEE REFUSED TO FOLLOW HIS DIRECTIONS, SMITH WOULD SEND HIM HOME REPORT THE MATTER. HE SENT A PROBATIONARY EMPLOYEE HOME FOR REFUSAL TO FOLLOW HIS INSTRUCTIONS BUT SETTLED THE MATTER THE FOLLOWING DAY AND DID NOT REPORT THE INCIDENT TO ANYONE.

6. THE PROBLEM AS TO THE STATUS OF SURVEY PARTY CHIEFS IS A DIFFICULT ONE IN LIGHT OF THE EVIDENCE BEFORE THE BOARD. THERE SEEMS LITTLE DOUBT THAT THE FACT THAT THE WITNESS IS IN CHARGE OF THE SURVEY PARTY AND WORKS ALONG WITH IT, STANDING ALONE, WOULD NOT ESTABLISH THAT HE EXERCISES MANAGERIAL FUNCTIONS BUT WOULD, RATHER, SIMPLY MEAN THAT A SURVEY PARTY CHIEF WAS MERELY A LEAD OR CHARGE HAND. WHEN, HOWEVER, THERE IS ADDED TO THAT ELEMENT OF CHARGE OR LEADERSHIP THE ADDITIONAL FUNCTIONS REVIEWED ABOVE, THAT IS THE POWER TO MAKE INDEPENDENT DECISIONS WITH RESPECT TO REPRIMANDS, TIME OFF AND DISCIPLINARY SUSPENSIONS FOR REFUSAL TO OBEY DIRECTIONS, THE TOTAL JOB APPEARS IN A DIFFERENT LIGHT. IT IS THE OPINION OF THE BOARD THAT ON THE BROAD VIEW, IT MUST FIND THAT SURVEY PARTY CHIEFS EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE LABOUR RELATIONS ACT AND ARE EXCLUDED FROM THE BARGAINING UNIT.

. . .

12. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

2085-72-U: THE CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) v. CONVALODGE NURSING HOME (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND A. MAIN.

APPEARANCES AT THE HEARING: R. A. ARSENAULT FOR THE COMPLAINANT AND H. MCINTIRE FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 28, 1972.

1. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 79 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE RESPONDENT HAS DEALT WITH COLLEEN CHISHOLM CONTRARY TO THE PROVISIONS OF SEC-

TIONS 58(A), 58(c) AND 70(2) OF THE LABOUR RELATIONS ACT AND REQUESTS THAT SHE BE REINSTATED IMMEDIATELY AND BE PAID FOR LOST WAGES.

2. COLLEEN CHISHOLM HAD BEEN EMPLOYED BY THE RESPONDENT FROM JULY 1971. AT THE TIME OF HER TERMINATION, MAY 19, 1972, SHE WAS EMPLOYED AS PHYSIOTHERAPIST AID. WE ARE OF THE OPINION, THAT THE MATTER OF CHISHOLM'S QUALIFICATIONS OR LACK THEREOF HAD NOTHING TO DO WITH THE REASONS FOR HER DISCHARGE.

3. AT HER TERMINATION INTERVIEW WHICH TOOK PLACE ON MAY 16, 1972, CHISHOLM WAS GIVEN A LETTER BY THE ADMINISTRATOR OF THE RESPONDENT WHICH READS AS FOLLOWS:

"BECAUSE THE EXTENDED CARE PROGRAM OF THE PROVINCE OF ONTARIO REFUSED TO GIVE US THE ANTICIPATED RAISE IN THE PER DIEM RATE, WE ARE BEING FORCED TO PHASE OUT OUR PROGRAMMED PHYSICAL THERAPY.

THIS PROGRAM WILL BE FINISHED FRIDAY, MAY 19. BECAUSE THE PROGRAM WILL BE PHASED OUT, YOUR EMPLOYMENT WITH CONVALDGE NURSING HOME SHALL BE TERMINATED ON THE SAME DAY. WHEN WE IN-AUGURATE THE PROGRAM AGAIN AND IF AN AIDE CAN BE USED, WE WOULD HOPE YOU COULD CONSIDER TAKING PART IN IT.

I WANT TO THANK YOU FOR YOUR PART IN THE HEALTH CARE OF OUR RESIDENTS HERE AT THE HOME."

THE BOARD BELIEVES IT TO BE OF CONSIDERABLE IMPORTANCE TO NOTE THAT WHILE REFERENCE IS MADE TO THE "PROGRAMMED PHYSICAL THERAPY", THERE WAS, IN FACT, ONLY ONE PERSON, CHISHOLM, INVOLVED IN THE PROGRAM. THERE WAS NO PROFESSIONAL PHYSICAL THERAPY STAFF.

4. IT WAS MADE QUITE CLEAR BY THE RESPONDENT AT THE HEARING THAT THE SOLE REASON RELIED UPON TO JUSTIFY CHISHOLM'S TERMINATION WAS AS SET OUT IN THE ABOVE LETTER. THE RESPONDENT MAINTAINED THAT UNION ACTIVITY HAD NOTHING TO DO WITH THE TERMINATION OF CHISHOLM'S EMPLOYMENT. THE ADMINISTRATOR WHO TERMINATED CHISHOLM STATED THAT HE WAS UNAWARE UNTIL THE HEARING THAT SHE WAS CONNECTED WITH THE UNION. THE ADMINISTRATOR ALSO TESTIFIED THAT AT THE TERMINATION MEETING, CHISHOLM STATED THAT SHE KNEW THE JOB WAS ENDING AND THAT SHE INTENDED TO GET OUT OF NURSING FOR THREE YEARS OR SO.

5. CHISHOLM TESTIFIED THAT DURING THE COURSE OF HER EMPLOYMENT SHE HAD RECEIVED NO ADVERSE CRITICISM WITH RESPECT TO THE MANNER IN WHICH SHE CARRIED OUT HER DUTIES. IN FACT, IT WAS ADMITTED BY THE RESPONDENT THAT IT HAD FOUND HER TO BE A REASONABLY

SATISFACTORY EMPLOYEE. ON MAY 10, 1972, CHISHOLM ATTENDED A UNION MEETING AT WHICH SHE SIGNED A UNION CARD. AT THE MEETING SHE WAS ELECTED SPOKESMAN FOR THE UNION. SHE WAS ACTIVE IN HAVING OTHER EMPLOYEES SIGNING UNION CARDS.

6. THERE IS NO DOUBT WHATSOEVER THAT THE ADMINISTRATOR OF THE RESPONDENT WAS AWARE OF THE FACT THAT THERE WAS TO BE A MEETING OF THE UNION ON MAY 10, 1972. IN CROSS-EXAMINATION, MR. MCINTYRE TESTIFIED THAT HE HAD HAD A DISCUSSION ON MAY 12, 1972 WITH MR. ARSENAULT, THE UNION ORGANIZER, WHO FOR REASONS WHICH WERE NOT EXPLAINED, VISITED THE ADMINISTRATOR AND TOLD HIM THAT AN ATTEMPT WAS BEING MADE TO ORGANIZE THE EMPLOYEES. THE UNCONTRADICTED EVIDENCE OF CHISHOLM IS THAT THE HOSPITAL ADMINISTRATOR ASKED HER AND OTHER EMPLOYEES A COUPLE OF DAYS BEFORE THE MEETING WHETHER THEY WERE GOING TO ATTEND.

7. THERE IS AMPLE EVIDENCE TO ESTABLISH THAT THERE WAS AND IS WORK AVAILABLE AT THE RESPONDENT'S ESTABLISHMENT WHICH CHISHOLM IS WELL QUALIFIED TO PERFORM. THERE HAVE BEEN NUMEROUS VACANCIES FOR NURSES' AIDS WHICH HAVE BEEN FILLED BY THE RESPONDENT SINCE THE TERMINATION OF CHISHOLM. IT IS CLEAR TO US UPON THE EVIDENCE THAT NOTWITHSTANDING WHAT CHISHOLM MAY HAVE SAID TO THE ADMINISTRATOR ABOUT GETTING OUT OF NURSING, THAT IT WAS MADE PERFECTLY CLEAR TO HIM THAT SHE WAS SEEKING RE-EMPLOYMENT NOT AS A PHYSICAL THERAPY AID WHICH POSITION THE COMPLAINANT AND CHISHOLM AGREE THE RESPONDENT WAS FREE TO ABOLISH BUT AS A NURSE'S AID.

8. IN VIEW OF THE ADMITTED SATISFACTORY WORK RECORD OF CHISHOLM AND THE CONSIDERABLE TURNOVER OF STAFF IN THE PERIOD FOLLOWING HER TERMINATION, WE ARE COMPELLED TO FIND UPON ALL OF THE EVIDENCE AND THE CREDIBILITY OF THE WITNESSES THAT THE REASON FOR THE RESPONDENT'S REFUSAL TO EMPLOY OR TO CONTINUE TO EMPLOY CHISHOLM IS BECAUSE SHE IS A MEMBER OF A TRADE UNION. THIS IS CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

9. THE BOARD THEREFORE DETERMINES THAT CHISHOLM BE REIN-STATED IN EMPLOYMENT WITH THE RESPONDENT. IT IS UNDERSTOOD THAT THE POSITION SHE OCCUPIED AT THE TIME OF HER TERMINATION NO LONGER EXISTS. THE BOARD THEREFORE DETERMINES THAT CHISHOLM BE EMPLOYED FORTHWITH IN THE CAPACITY OF NURSE'S AID OR A LIKE OCCUPATION THERETO.

10. IN DETERMINING THE AMOUNT OF COMPENSATION TO BE PAID TO CHISHOLM, THE BOARD HAS TAKEN INTO ACCOUNT THE EVIDENCE RELATING TO HER DUTY TO MITIGATE HER LOSSES AND ACCORDINGLY FIXES THAT AMOUNT AT \$920.00 TO BE PAID TO HER BY THE RESPONDENT FORTHWITH.

1308-71-U: PERCY WOODS (COMPLAINANT) V. LOCAL 4912 OF THE UNITED STEEL WORKERS (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: PERCY WOODS FOR THE COMPLAINANT; LORNE INGLE, CARL GAREAU AND PETER KENNEDY FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 29, 1972.

1. IN DEALING WITH A COMPLAINT FILED UNDER THE PROVISIONS OF SECTION 79 OF THE LABOUR RELATIONS ACT, IN WHICH THE COMPLAINANT ALLEGED THAT HE HAD BEEN DEALT WITH BY THE RESPONDENT TRADE UNION CONTRARY TO SECTION 60 OF THE ACT, THE BOARD, FOLLOWING A HEARING IN THIS REGARD, PURSUANT TO ITS DECISION DATED APRIL 14, 1972, DISMISSED THE COMPLAINT INSOFAR AS IT WAS BASED ON THE WORKMEN'S COMPENSATION PROCEEDINGS. HOWEVER, THE CONCLUDING PORTIONS OF THE SAID DECISION OF THE BOARD PROVIDED AS FOLLOWS:

"9. THE NEXT PROBLEM TO BE CONSIDERED IS THE COMPLAINANT'S CLAIM THAT THE RESPONDENT UNION SHOULD HAVE FILED A GRIEVANCE ON HIS BEHALF IN JUNE, 1971. THE MATERIALS AND EVIDENCE BEFORE US ON THIS ASPECT OF THE COMPLAINT ARE NOT NEARLY SO COMPLETE AS THOSE CONSIDERED IN RELATION TO THE WORKMEN'S COMPENSATION COMPLAINT. MORE SPECIFICALLY, WHILE THERE IS SOME EVIDENCE, THE MEDICAL REPORTS, TENDING TO SUPPORT THE COMPLAINANT'S CASE, WE ARE UNABLE TO JUDGE THE CONTENTIONS OF THE RESPONDENT IN RELATION TO THE EVENTS THAT OCCURRED. WHILE THE RESPONDENT MAY HAVE A VALID DEFENCE, THIS CAN ONLY BE ESTABLISHED THROUGH EVIDENCE.

10. IN THESE CIRCUMSTANCES, WE ARE OF THE OPINION THAT THE BOARD SHOULD INQUIRE INTO MR. WOODS' COMPLAINT BY MEANS OF A HEARING BY THE BOARD. THE HEARING OF THIS COMPLAINT WILL BE RESTRICTED TO THAT ASPECT OF THE COMPLAINT CONCERNING THE ALLEGED FAILURE OF THE RESPONDENT UNION TO FILE A GRIEVANCE ON MR. WOODS' BEHALF IN THE SUMMER OF 1971."

2. IN REACHING THIS CONCLUSION, IT WOULD APPEAR THAT THE BOARD TOOK INTO ACCOUNT TWO LETTERS FILED BY THE COMPLAINANT IN SUPPORT OF THE APPLICATION. ONE IS A LETTER FROM A MEDICAL PRACTITIONER DATED JUNE 9, 1971, WHICH PROVIDES AS FOLLOWS:

PERCY WOODS
 "PATIENT'S NAME.....

NAPANEE
 ADDRESS.....

THIS IS TO CERTIFY THAT IN MY OPINION
 YOU MAY RESUME YOUR USUAL DUTIES EFFECTIVE
 IMMEDIATELY. IN VIEW OF THE PROLONGED ABSENCE
 FROM WORK YOU MAY BE WELL ADVISED TO START
 WITH EASIER JOBS AND PROGRESS TO FULL DUTIES
 IN 1-2 WEEKS."

THE OTHER LETTER DATED JUNE 8, 1971, IS FROM A CHIROPRACTOR, WHICH
 STATES IN PART:

"MR. PERCY WOODS HAS BEEN UNDERGOING TREATMENTS
 FOR A BRACHIAL AND UPPER THORACIC INTERCOSTAL
 NEURALGIA SINCE MARCH 2, 1971. IN MY OPINION
 HE SHOULD BE ABLE TO RESUME REGULAR WORK."

3. THE EVIDENCE AS ADDUCED AT THE HEARING OF THIS MATTER
 ON AUGUST 4, 1972, IS AS FOLLOWS: THE COMPLAINANT WAS ORIGINALLY
 HIRED BY NAPANEE INDUSTRIES LIMITED ON OCTOBER 3, 1949 AND HIS
 SERVICES THEREIN WERE TERMINATED ON AUGUST 16, 1971. ON APRIL 17,
 1968, THE COMPLAINANT SUFFERED AN ANKLE INJURY AT THE COMPANY'S
 PREMISES AS A RESULT OF A FALL FROM A LADDER. FOLLOWING MEDICAL
 TREATMENT AND RECEIPT OF FURTHER COMPENSATION BENEFITS DURING HIS
 PERIOD OF REHABILITATION, HE RETURNED TO WORK IN OCTOBER OF 1968.
 HOWEVER, AT THIS TIME HE COMPLAINED OF BACK PROBLEMS AND CLAIMED
 THAT THIS CONDITION STEMMED FROM THE ACCIDENT GIVING RISE TO HIS
 INITIAL ANKLE INJURY. FOLLOWING REPRESENTATIONS TO THE WORKMEN'S
 COMPENSATION BOARD, HIS CLAIM IN THIS REGARD WAS DENIED AND IT WAS
 RULED THAT THE COMPLAINANT'S BACK INJURIES WERE NOT RELATED TO THE
 COMPENSABLE ACCIDENT OF APRIL 17, 1968. THE RESPONDENT REPRESENTED
 THE COMPLAINANT IN HIS APPEAL TO THE APPEAL TRIBUNAL AND BY DECISION
 OF THAT BODY DATED OCTOBER 24, 1969, HIS CLAIM WAS DENIED. A FUR-
 THER APPEAL TO THE WORKMEN'S COMPENSATION BOARD ITSELF, CONFIRMED
 ON MARCH 3, 1971, THE DECISION OF THE APPEAL TRIBUNAL AND THE APPEAL
 OF THE COMPLAINANT WAS CONSEQUENTLY DENIED.

4. IN RESPONSE TO THE COMPLAINANT'S REQUEST FOR A FURTHER
 REVIEW, MR. CARL GAREAU A STAFF MEMBER WITH THE UNITED STEELWORKERS
 OF AMERICA AND ASSIGNED TO THE COMPLAINANT, WROTE TO A SPECIALIST,
 DR. ASHWORTH, AS FOLLOWS:

"PLEASE FIND ENCLOSED A COPY OF THE DECISION
 OF THE WORKMEN'S COMPENSATION BOARD WITH RESPECT
 TO THE ABOVE MENTIONED INJURY.

MR. WOODS HAS APPEALED TO THE FINAL STAGES
 OF THE WORKMEN'S COMPENSATION BOARD.

MR. WOOD'S APPARENTLY CANNOT ACCEPT THE

EXAMINED HIM WERE APPOINTED BY THE BOARD AND AS SUCH LACKS TRUST IN THEIR JUDGEMENT.

IN ORDER THAT MR. WOOD'S MAY HAVE AN IMPARTIAL DECISION, I HAVE ASKED THAT HE SEE YOU FOR AN EXAMINATION.

I WOULD APPRECIATE A REPORT FROM YOU AS SOON AS THE EXAMINATION IS COMPLETED."

BY LETTER DATED JUNE 29, 1971, DR. ASHWORTH, IN EFFECT CONFIRMED THE MEDICAL OPINIONS RELIED UPON BY THE WORKMEN'S COMPENSATION BOARD THAT THE COMPLAINANT'S BACK AILMENTS WERE NOT WORK-RELATED.

5. THE COMPLAINANT NEVERTHELESS PERSISTED IN HIS DEMANDS TO THE RESPONDENT WHICH PROMPTED MR. GAREAU TO REPLY BY LETTER DATED AUGUST 16, 1971, IN PART, AS FOLLOWS:

"DEAR BROTHER WOODS:

I AM IN RECEIPT OF FOUR LETTERS FROM YOU WHICH YOU HAVE SENT IN THE PAST WEEK.

WHEN YOU CAME INTO MY OFFICE I WAS QUITE PREPARED TO DO EVERYTHING POSSIBLE TO HELP YOU OUT WITH WORKMEN'S COMPENSATION OR ANY OTHER PROBLEM THAT YOU MIGHT HAVE. AFTER A COMPLETE REVIEW OF YOUR FILE IT WAS AGREED THAT YOU WOULD GO AND SEE DR. ASHWORTH. IN THE LIGHT OF ALL THE PREVIOUS APPEALS THAT YOU HAD MADE, IT WAS AGREED THAT ANY APPEAL WOULD HAVE TO BE BASED ON NEW INFORMATION THAT MIGHT BE ACQUIRED AS A RESULT OF YOUR EXAMINATION BY DR. ASHWORTH. DR. ASHWORTH'S REPORT DOES NOT DEFER FROM ALL PREVIOUS REPORTS MADE BY OTHER PHYSICIANS.

YOUR LETTER OF AUGUST 11, 1971, SEEMS TO INDICATE THAT YOU JUST DO NOT ACCEPT THAT FACT.

IN MY OPINION, A FURTHER APPEAL TO THE WORKMEN'S COMPENSATION BOARD WOULD BE FRUITLESS AND A WASTE OF TIME, UNLESS YOU WERE ABLE TO SHOW, BASED ON COMPETENT EVIDENCE FROM A QUALIFIED ORTHOPAEDIC SURGEON THAT PREVIOUS DIAGNOSIS HAVE BEEN INCORRECT.

FOR THIS REASON I AM NOT PREPARED TO AGAIN APPEAL TO THE BOARD ON YOUR BEHALF, AT THIS TIME."

6. BY LETTER DATED AUGUST 16, 1971, THE COMPLAINANT WAS ADVISED

OF HIS TERMINATION OF EMPLOYMENT BY MR. CURRAN, PERSONNEL MANAGER OF THE COMPANY AS FOLLOWS:

"AS YOU ARE AWARE, DESPITE REPEATED REQUESTS, YOU HAVE BEEN UNABLE TO FURNISH THE COMPANY WITH A MEDICAL CERTIFICATE JUSTIFYING YOUR RECENT ABSENCE. WE THEREFORE REGRET THAT WE MUST ADVISE YOU THAT YOUR EMPLOYMENT IS TERMINATED EFFECTIVE IMMEDIATELY.

AS YOU HAVE BEEN PREVIOUSLY ADVISED THE SERVICES OF THIS COMPANY ARE AVAILABLE TO ASSIST YOU IN RELOCATING YOURSELF."

7. BY LETTER DATED AUGUST 19, 1971, THE COMPLAINANT REQUESTED MR. GAREAU TO FILE A GRIEVANCE IN THIS REGARD. MR. GAREAU'S FRUSTRATION AT THIS POINT IS PERHAPS BEST INDICATED IN A HANDWRITTEN LETTER HE IMMEDIATELY MAILED TO THE COMPLAINANT, WHICH PROVIDES AS FOLLOWS:

"THIS WILL SERVE AS A FINAL REPLY TO YOUR CONSTANT STREAM OF LETTERS. IN OUR LAST TELEPHONE CONVERSATION YOU PROMISED ME THAT THERE WOULD NOT BE ANY MORE LETTERS OF THIS KIND. I REPRESENT SOME TWO THOUSAND MEMBERS IN THIS UNION. I AM AVAILABLE TWENTY FOUR HOURS A DAY WHEN THERE IS A NEED FOR MY SERVICES. HOWEVER, WHEN I HAVE DONE EVERYTHING POSSIBLE ON BEHALF OF A MEMBER, I DO NOT LIKE TO BE CONTINUOUSLY SOLICITED BY LETTER, PHONE, OR OTHER MEANS. I HAVE REPEATEDLY TOLD YOU WHAT OPTIONS ARE AVAILABLE TO YOU. JUST WHEN I BELIEVE THAT YOU WILL DO WHAT IS REALISTIC TO HELP YOURSELF I GET ANOTHER LETTER, REQUESTING ME TO PURSUE SOME FRUITLESS COURSE OF ACTION.

I HAVE TOLD YOU WHY IT WOULD BE USELESS TO APPEAL THE WORKMEN'S COMPENSATION BOARD DECISION. NOW I WILL DEAL WITH THE MATTER OF FILING A GRIEVANCE. WHEN YOU ARE HIRED BY A COMPANY, YOU ARE EXPECTED TO WORK YOUR NORMAL HOURS OF WORK. IT IS RECOGNIZED THAT ANYONE CAN BECOME ILL OR SUSTAIN AN INJURY. THAT IS WHY WE HAVE WORKMEN'S COMPENSATION AND A WEEKLY INDEMNITY PROGRAM. IN THE LAST TWO YEARS YOU HAVE BEEN OFF MORE OFTEN THAN YOU HAVE WORKED. YOU HAVE EXHAUSTED ALL WEEKLY INDEMNITY BENEFITS. THAT IN ITSELF IS OF NO CONSEQUENCE, EXCEPT TO SHOW THAT YOU WERE NOT AVAILABLE FOR WORK.

ON MORE THAN ONE OCCASION YOU WERE ASKED TO BRING A DOCTOR'S CERTIFICATE TO SHOW THAT YOU ARE CAPABLE OF DOING YOUR JOB. THE BEST YOU COULD DO

WAS BRING A CERTIFICATE CLEARING YOU FOR LIGHT WORK. THE COMPANY DOES NOT HAVE LIGHT WORK FOR YOU. FILING A GRIEVANCE WOULD BE FINE IF YOU WERE FIT TO RETURN TO WORK OR IF YOU COULD SHOW THAT YOUR INJURY WOULD NOT LIKELY CAUSE FURTHER LENGTHY ABSENCES FROM WORK. ON THE ONE HAND YOU CLAIM YOU CAN WORK, ON THE OTHER YOU CLAIM YOU SHOULD BE RECEIVING WORKMEN'S COMPENSATION. THE TWO POSITIONS ARE INCOMPATIBLE. UNDER THE CIRCUMSTANCES, I FEEL THAT PROCESSING A GRIEVANCE WOULD BE FUTILE. YOU WERE NOT FIRED, BUT LAID-OFF ON MEDICAL GROUNDS. THIS YOU KNOW, SINCE YOU STATED SAME IN YOUR LETTER OF AUGUST 11TH.

I CAN ONLY REPEAT WHAT I HAVE SAID BEFORE. REGISTER WITH THE UNEMPLOYMENT INSURANCE COMMISSION. ASK FOR RE-TRAINING UNDER MANPOWER. INVESTIGATE THE POSSIBILITY OF RECEIVING A DISABILITY PENSION UNDER THE CANADA PENSION PLAN. THIS IS ALL THE ADVICE I CAN GIVE YOU. I WILL NOT REPLY TO ANY MORE LETTERS FROM YOU UNLESS I FEEL THAT I CAN BE OF ASSISTANCE TO YOU IN ONE OF THE ABOVE MATTERS."

8. THE EVIDENCE OF MR. RAY O'CALLAGHAN, THE VICE-PRESIDENT AND GENERAL MANAGER OF NAPANEE INDUSTRIES LIMITED AT THE RELEVANT TIMES, DISCLOSES THAT IT WAS HIS DECISION TO TERMINATE THE COMPLAINANT. THE WITNESS STATED THAT ON JUNE 10, 1971, THE COMPLAINANT PRESENTED HIM WITH THE TWO LETTERS REFERRED TO IN PARAGRAPH #2 HEREIN. IN THE RESULTANT TWO AND ONE HALF HOUR DISCUSSION THAT EN- SUEDED, THE WITNESS STATED THAT THE COMPLAINANT INDICATED THAT HE WAS STILL SUFFERING FROM HEADACHES AND BACK PAIN. IN THIS REGARD, THE LATTER WAS ADVISED THAT THE COMPANY HAD NO LIGHT DUTY WORK AVAILABLE FOR HIM TO PERFORM. AS A RESULT, THE WITNESS STATED THAT MR. WOODS AGREED TO REGISTER FOR RETRAINING WITH CANADA MANPOWER AND MR. O'CALLAGHAN PERSONALLY ATTENDED TO THE ARRANGEMENTS. IN THE WORDS OF THE WITNESS, THE FOLLOWING TRANSPIRED: "I WAS THEREFORE SURPRISED WHEN MR. CURRAN TOLD ME THAT MR. WOODS NO LONGER WANTED THIS. I THEN DISCUSSED THE CASE WITH MR. GAREAU AND THE LOCAL UNION PRESIDENT. WE JOINTLY CAME UP WITH THE IDEA OF A NIGHT WATCHMAN'S JOB. I ALSO GOT A FIELD OFFICER OF THE WORKMEN'S COMPENSATION BOARD TO EXPLAIN TO MR. WOODS WHAT WE WERE DOING FOR HIM. MR. CURRAN THEN INFORMED ME THAT MR. WOODS WOULD NOT ACCEPT THE NIGHT WATCHMAN'S JOB AND WANTED THE COMPANY TO PROCESS HIS CLAIM. HE WAS DISMISSED ON AUGUST 16, 1971, SIMPLY BECAUSE HE WAS MEDICALLY UNFIT TO CONTINUE EMPLOYMENT.

9. SIMPLY PUT, THE QUESTION BEFORE THIS BOARD IS TO DETERMINE WHETHER THE RESPONDENT IN ITS REFUSAL TO PROCESS A GRIEVANCE ON THE

PART OF MR. WOODS IN THESE CIRCUMSTANCES, ACTED IN A MANNER THAT WAS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH CONTRARY TO THE PROVISIONS OF SECTION 60 OF THE ACT.

10. IN THIS REGARD, REFERENCE SHOULD BE HAD TO THE STATEMENTS MADE BY THE BOARD IN ITS RECENT DECISION DATED AUGUST 2, 1972, IN THE DOROTHE ELLENS CASE (BOARD FILE 1799-71-U) WHERE AT PAGE 9, APPEARS THE FOLLOWING:

"20. BEFORE GOING ANY FURTHER INTO THE MATTER, THE BOARD BELIEVES IT SHOULD MAKE CLEAR THAT IT DOES NOT CONSIDER THE DUTY OF FAIR REPRESENTATION REQUIRES A UNION TO BLINDLY CARRY EVERY GRIEVANCE THROUGH TO ARBITRATION AT THE DEMAND OF THE GRIEVOR. THE GRIEVANCE PROCEDURES SET OUT IN COLLECTIVE AGREEMENTS ARE OBVIOUSLY DESIGNED TO AFFORD OPPORTUNITY FOR SETTLEMENT AND COMPROMISE AT ANY OF THE DIFFERENT LEVELS OF CONSULTATION UP TO ARBITRATION. THE SETTLEMENT OF DISPUTES AND GRIEVANCES OF EMPLOYEES UNDER THE TERMS OF A COLLECTIVE AGREEMENT HAS BEEN SAID TO BE AS MUCH A PART OF THE GENERAL PROCESS OF COLLECTIVE BARGAINING AS ARE THE NEGOTIATIONS WHICH BRING ABOUT A COLLECTIVE AGREEMENT, (SEE UNITED STEEL WORKERS OF AMERICA, LOCAL 2853 V. WELLAND-VALE MANUFACTURING CO. LTD. [1943] 3 D.L.R., P. 786). IN OUR OPINION, THE SETTLEMENT OF DISPUTES INCLUDES THE RIGHT AS WELL AS THE DUTY ON THE PART OF THE BARGAINING AGENT TO REFUSE, ON PROPER GROUNDS, TO PROCESS A GRIEVANCE AT ALL OR TO WITHDRAW OR ABANDON IT AT ANY STAGE IN THE GRIEVANCE PROCEDURE. THE ABOVE CASE STATES THAT THE BARGAINING AGENT IS THE AGENT FOR ALL EMPLOYEES WHETHER THEY BE MEMBERS OF THE UNION OR NOT AND THAT IT MUST REPRESENT EACH EMPLOYEE IN THE BARGAINING UNIT WITHOUT DISCRIMINATION. THIS PRINCIPLE IS THE SAME AS THAT EMBODIED IN SECTION 60 OF THE LABOUR RELATIONS ACT.

21. THE FOREGOING RIGHT OF THE BARGAINING AGENT TO SETTLE DISPUTES AND GRIEVANCES, HOWEVER, IS NOT, IN ANY WAY, CURTAILED BY THE PROVISIONS OF SECTION 60 OF THE ACT. THE SECTION IS DESIGNED ONLY TO ENSURE THAT, IN THE COURSE OF EXERCISING ITS POWERS, THE UNION DOES NOT ACT IN A WAY THAT IS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH.

22. THE PRESENT INQUIRY THEREFORE IS NOT

CONCERNED WITH THE FUNDAMENTAL RIGHT OF THE BARGAINING AGENT TO SETTLE OR WITHDRAW A GRIEVANCE, BUT RATHER WITH THE QUESTION AS TO WHETHER, IN DEALING WITH THE PRESENT MATTER, THE UNION FELL SHORT OF THE REQUIREMENTS OF FAIR REPRESENTATION SET OUT IN SECTION 60 OF THE ACT."

11. HAVING REGARD TO ALL OF THESE CIRCUMSTANCES AND TAKING INTO ACCOUNT THE PRINCIPLES ABOVE CITED, WE HAVE NO HESITATION IN FINDING THAT THE COMPLAINANT, MR. PERCY WOODS, HAS FAILED TO ESTABLISH THAT THE RESPONDENT UNION ACTED IN A MANNER THAT WAS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH IN REFUSING TO PROCESS A GRIEVANCE IN HIS BEHALF IN THE SUMMER OF 1971. FAR FROM BREACHING ITS DUTY OF FAIR REPRESENTATION IN THIS REGARD, WE FIND THE ACTIONS OF THE RESPONDENT TO BE COMMENDABLE (AS WERE THOSE OF THE EMPLOYER, NAPANEE INDUSTRIES LIMITED), IN ITS ENDEAVOURS TO ASSIST IN THESE MOST TRYING AND DIFFICULT CIRCUMSTANCES.

12. ACCORDINGLY, THE COMPLAINT IN THIS REGARD MUST BE DISMISSED.

1287-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. J. E. MARTEL & SONS LUMBER LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

APPEARANCES AT THE HEARING: B.A. DUNN, HAROLD RITCHIE AND DONALD BAZINET FOR THE APPLICANT; LLOYD J. VALIN, K. R. VALIN AND J. MARTEL FOR THE RESPONDENT; NO ONE APPEARING FOR THE OBJECTORS.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER J. D. BELL:
AUGUST 31, 1972.

1. PURSUANT TO THE DECISION OF THE BOARD DATED JUNE 29, 1972, THE BOARD CONTINUED THE HEARING IN THIS MATTER TO CONSIDER THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES RELATING TO THE APPLICANT'S ALLEGATIONS OF IMPROPER CONDUCT ON THE PART OF THE RESPONDENT PRIOR TO THE TAKING OF THE REPRESENTATION VOTE WHICH WAS CONDUCTED ON APRIL 6, 1972.

2. THE ESSENTIAL FACTS GIVING RISE TO THESE ALLEGATIONS, WE FIND, ARE AS FOLLOWS: ON MARCH 28 AND 29, 1972, SOME SIX OR SEVEN DAYS PRIOR TO THE DATE FIXED BY THE REGISTRAR FOR THE TAKING OF THE REPRESENTATION VOTE PURSUANT TO THE DECISION OF THE BOARD IN THIS MATTER DATED MARCH 7, 1972, THE EMPLOYEES ENGAGED IN THE RESPONDENT'S MILL OPERATIONS, WERE INDIVIDUALLY SUMMONED DURING WORKING HOURS TO ATTEND THE OFFICE OF JEAN MARTEL, THE MILL SUPERINTENDENT. DURING

THESE INDIVIDUAL INTERVIEWS, A METHOD OF COMMUNICATIONS NOT USED BEFORE JEAN MARTEL, EACH EMPLOYEE WAS ADVISED THAT INCREASES IN WAGES WHICH HAD BEEN PREVIOUSLY PROMISED TO THE EMPLOYEES TOGETHER WITH OTHER BENEFITS WOULD BE IMPLEMENTED IMMEDIATELY FOLLOWING THE VOTE IF THE UNION WAS UNSUCCESSFUL. HOWEVER, IN THE EVENT THAT THE VOTE WAS IN FAVOUR OF THE UNION, EACH EMPLOYEE WAS INFORMED THAT THESE MATTERS WOULD THEN BECOME SUBJECT TO NEGOTIATIONS BETWEEN THE RESPONDENT AND THE UNION. IN THIS REGARD, WE ARE SATISFIED ON THE EVIDENCE, THAT THE RESPONDENT HAS AN ESTABLISHED POLICY OF ALLOTTING RATES OF PAY AND BENEFITS SIMILAR TO THOSE OF ITS TWO COMPETITORS IN THE CHAPLEAU AREA; THAT JEAN MARTEL IN RESPONSE TO A WRITTEN DEMAND OF THE EMPLOYEES PROMISED THEM IN EARLY NOVEMBER OF 1971, INCREASES WHICH WOULD BE IMPLEMENTED "SOMETIME AFTER THE NEW YEAR"; THAT THE GRANTING OF SUCH INCREASES WAS DELAYED BY THE FILING OF THIS APPLICATION ON NOVEMBER 23, 1971, AND, FINALLY THAT AT ALL RELEVANT TIMES THEREAFTER ITS RATES OF PAY AND BENEFITS WERE LOWER THAN THOSE ALLOTTED BY ITS COMPETITORS.

3. WE FURTHER FIND THAT DURING THE COURSE OF THESE INTERVIEWS, A BALLOT WAS CONSPICUOUSLY DISPLAYED ON MARTEL'S DESK IN SUCH A MANNER THAT THE INTERVIEWEE COULD NOT HELP BUT OBSERVE. AN "X" HAD BEEN INSERTED IN THE SPACE OPPOSITE THE WORD "No", IN ANSWER TO THE QUESTION AS TO WHETHER THE EMPLOYEES WISHED TO BE REPRESENTED BY THE APPLICANT. MARTEL'S EXPLANATION FOR HAVING THE BALLOT THERE, WAS TO IN EFFECT PROVIDE THE EMPLOYEE WITH SOME HELPFUL INSTRUCTION IN THE EVENT THE EMPLOYEE EXPERIENCED ANY DIFFICULTIES IN FILLING IT OUT. HOWEVER, MARTEL FURTHER INDICATED THAT HE HAD NO OCCASION TO SPECIFICALLY SHOW THE BALLOT TO ANY OF THE EMPLOYEES AS NO ONE RAISED ANY QUERIES IN THIS AREA. IN THIS REGARD, THERE WAS FILED IN THESE PROCEEDINGS (EXHIBIT #3) CORRESPONDENCE IN FRENCH FROM THE APPLICANT DATED MARCH 14, WHICH HAD BEEN RECEIVED BY SOME OF THE EMPLOYEES WHO GAVE EVIDENCE ON BEHALF OF THE APPLICANT. ON THE SAMPLE BALLOT APPEARING THEREIN, AN "X" IS SHOWN IN THE SPACE OPPOSITE THE WORD "Oui."

4. THE APPLICANT AT THE HEARING OF THIS MATTER ON AUGUST 21 AND 22, 1972, ADDUCED EVIDENCE FROM VARIOUS EMPLOYEES WHO HAD BEEN INTERVIEWED BY JEAN MARTEL AT THE RELEVANT TIMES. DONALD BAZINET TESTIFIED THAT: "HE (MARTEL) TOLD ME THE UNION WAS COMING IN, THERE WAS GOING TO BE A VOTE THE NEXT WEEK AND THAT HE HAD A PROPOSITION TO MAKE. IF THEY VOTED AGAINST THE UNION, IT WOULD GIVE HIM A CHANCE TO SHOW THAT HE COULD GIVE AS GOOD TERMS AS THE UNION WOULD AND MAYBE BETTER." LUCIEN BOUFFARD, ON THE OTHER HAND, ASIDE FROM THE REFERENCE TO IMMEDIATE INCREASES IF THE UNION DID NOT SUCCEED, COULD NOT RECALL ANY OTHER DIRECT STATEMENTS ABOUT THE UNION. MICHEL TRUDEL'S VERSION OF MARTEL'S REMARKS AS ELICITED ON CROSS-EXAMINATION WERE: "HE SAID HE WANTED ME TO VOTE FOR THE COMPANY. HE SAID SEE HOW IT WORKS OUT. IF IT DIDN'T WORK OUT, WE COULD TRY TO GET THE UNION IN AGAIN." MICHEL MARQUIS LEFT THE MEETING WITH THE IMPRESSION THAT ONLY HE AND NOT ALL OF THE EMPLOYEES WAS TO RECEIVE THE INCREASE. JEAN PIERRE CHALIFOUX TESTIFIED THAT MARTEL TOLD HIM "TO VOTE FOR THE GOOD SIDE,"

WHICH THE WITNESS INTERPRETED AS A VOTE FOR MARTEL. ALAN BAZINET'S EVIDENCE IS TO THE EFFECT THAT MARTEL TOLD HIM THAT "IF YOU SIGN FOR ME, YOU WOULDN'T HAVE TO PAY THE UNION." IN THIS REGARD, HE STATED THAT MARTEL WHEN REFERRING TO THE CARD WHICH HAD BEEN FILLED IN AS INDICATED ABOVE, FURTHER STATED: "AS FOR MYSELF, I HAVE VOTED ALREADY." MARTIAL BAZINET TESTIFIED THAT MARTEL INFORMED HIM THAT IF THE UNION DIDN'T GET IN, THEN HE WOULD PAY THE SAME BENEFITS AS ONE OF ITS UNIONIZED COMPETITORS. REMI CHALIFOUX TESTIFIED THAT MARTEL TOLD HIM THAT HE WAS NOT INTERESTED IN SEEING THAT THE UNION GOT IN. CLAUDE DESROCHERS CLAIMED THAT MARTEL SUGGESTED TO HIM THAT VOTING FOR THE UNION WOULD RESULT IN COSTLY LAWYER'S FEES. LIONEL DAYON'S RECOLLECTION OF MARTEL'S STATEMENTS TO HIM WERE THAT "IF I VOTED THE RIGHT WAY HE WOULD GIVE ME A 25¢ INCREASE PLUS FOUR PAID HOLIDAYS. HE TOLD ME TO DECIDE WELL AND IF I WANTED MORE INCREASES HE PROBABLY WOULD GIVE IT TO ME LATER. GAETAN MARQUIS ATTRIBUTED THE FOLLOWING WORDS TO MARTEL AS ELICITED AT THE INTERVIEW: "IF WE VOTE ON HIS SIDE WE WOULD GET THE CONDITIONS. IF WE VOTE FOR THE UNION AND IT GETS IN, ITS OUR TOUGH LUCK." HOWEVER, EACH OF THESE WITNESSES DID SAY THAT MARTEL HAD TOLD THEM THEY WERE FREE TO VOTE FOR OR AGAINST THE UNION.

5. THE FIRST ISSUE THAT ARISES THEREFORE IS TO DETERMINE WHETHER THE CONDUCT OF THE RESPONDENT, HAVING REGARD TO ALL OF THE CIRCUMSTANCES, WAS SUCH AS TO CAUSE THE BOARD TO SET ASIDE THE REPRESENTATION VOTE CONDUCTED ON APRIL 6, 1972. HAVING REGARD TO THE TIMING OF THESE INDIVIDUALIZED INTERVIEWS, THE CONDUCT AND MANNER IN WHICH THEY WERE CONDUCTED AND TO THE VARIOUS STATEMENTS WE FIND ATTRIBUTABLE TO JEAN MARTEL THEREIN, WE ACCORDINGLY FIND THAT THE RESPONDENT'S ACTIONS WERE DELIBERATELY CALCULATED TO FRUSTRATE THE PURPOSE AND INTENT OF THE REPRESENTATION VOTE AND CONSTITUTED, IN THESE CIRCUMSTANCES, UNDUE INFLUENCE, SUCH AS TO PREVENT THE TRUE WISHES OF THE EMPLOYEES FROM BEING DISCLOSED AT THE TIME OF THE TAKING OF THE VOTE. CONSEQUENTLY, THE BOARD DIRECTS THAT THE REPRESENTATION VOTE CONDUCTED ON APRIL 6, 1972, INSOFAR AS IT RELATES TO THE EMPLOYEES ENGAGED IN THE MILL OPERATIONS OF THE RESPONDENT, BE HEREBY SET ASIDE.

6. THE APPLICANT, HOWEVER ALLEGES THAT A NEW REPRESENTATION VOTE WHICH MIGHT BE ORDERED BY THE BOARD WOULD NOT IN THESE CIRCUMSTANCES REFLECT THE TRUE WISHES OF THE EMPLOYEES THEREIN AND IN THIS REGARD, ON THE BASIS OF THE COUNT AND ITS MEMBERSHIP POSITION IN RELATION TO THE BARGAINING UNIT, SEEKS OUTRIGHT CERTIFICATION UNDER THE PROVISIONS OF SECTION 7(4) OF THE ACT.

7. HAVING CAREFULLY REVIEWED ALL OF THE CIRCUMSTANCES HEREIN, WE ARE NOT SATISFIED THAT THE EFFECTS OF THE CONDUCT OF JEAN MARTEL, WHICH WE HAVE FOUND TO CONSTITUTE UNDUE INFLUENCE UPON THE MINDS OF THE EMPLOYEES AS REGARDS THE ORIGINAL REPRESENTATION VOTE, WOULD BE LIKELY TO CONTINUE AND CARRY OVER INTO A NEW REPRESENTATION VOTE SUCH AS TO PREVENT THE TRUE WISHES OF THE EMPLOYEES FROM BEING DISCLOSED THEREIN. ACCORDINGLY, IN THESE CIRCUMSTANCES, WE ARE NOT PREPARED TO

EXERCISE OUR DISCRETION PERMITTED US UNDER THE PROVISIONS OF SECTION 7(4) OF THE ACT.

8. THE BOARD THEREFORE DIRECTS THAT A NEW REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES ENGAGED IN THE MILL OPERATIONS OF THE RESPONDENT IN THE BARGAINING UNIT AS DEFINED IN THE DECISION OF THE BOARD IN THIS MATTER DATED FEBRUARY 9, 1972. ALL EMPLOYEES OF THE RESPONDENT IN THE SAID BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER E. BOYER: August 31, 1972.

HAVING REGARD TO ALL OF THE EVIDENCE, I WOULD HAVE GRANTED OUTRIGHT CERTIFICATION TO THE APPLICANT UNDER THE PROVISIONS OF SECTION 7(4) OF THE LABOUR RELATIONS ACT.

CASE LISTINGS AUGUST 1972

	PAGE
1. CERTIFICATION	
(A) BARGAINING AGENTS CERTIFIED	195
(B) APPLICATIONS DISMISSED	211
(C) APPLICATIONS WITHDRAWN	215
2. APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	216
3. APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS	217
4. APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL	217
5. APPLICATIONS FOR CONSENT TO PROSECUTE	218
6. APPLICATIONS FOR CONSENT TO PROSECUTE (HOSPITAL ARBITRATION ACT)	218
7. COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)	218
8. APPLICATION UNDER SECTION 10 (FORMERLY S. 8(B)) (RIGHT OF ACCESS)	220
9. APPLICATIONS UNDER SECTION 39 (FORMERLY S. 35(A))	220
10. APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT	220
11. APPLICATION UNDER SECTION 76 (FORMERLY S. 63)(FINANCIAL STATEMENT REQUESTED BY TRADE UNIONS MEMBER)	221
12. APPLICATION FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))	221
13. REFERENCE TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)	221
14. APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	221

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - DISMISSED

113-70-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. DOLENTE CONCRETE & DRAIN CO. (1969). (RESPONDENT). (REQUEST DENIED).

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING AUGUST 1972

BARGAINING AGENTS CERTIFIED DURING AUGUST

NO VOTE CONDUCTED

1049-71-R: PIPE LINE CONTRACTORS ASSOCIATION OF CANADA (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (RESPONDENT) V. THE UTILITY CONTRACTORS ASSOCIATION OF ONTARIO (INTERVENER).

UNIT: "ALL EMPLOYERS OF EMPLOYEES FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE PROVINCE OF ONTARIO IN THE PIPELINES SECTOR." (NO EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE APPLICANT, RESPONDENT AND INTERVENER THAT THE KIND OF WORK PRESENTLY PERFORMED UNDER THE UTILITIES CONTRACTORS COLLECTIVE AGREEMENTS WILL CONTINUE TO BE PERFORMED UNDER THOSE COLLECTIVE AGREEMENTS AND THE KIND OF WORK PRESENTLY PERFORMED UNDER PIPELINE CONTRACTORS COLLECTIVE AGREEMENTS WILL CONTINUE TO BE PERFORMED UNDER THOSE COLLECTIVE AGREEMENTS.).

1051-71-R: PIPE LINE CONTRACTORS ASSOCIATION OF CANADA (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL (RESPONDENT) V. THE UTILITY CONTRACTORS ASSOCIATION OF ONTARIO (INTERVENER).

UNIT: "ALL EMPLOYERS OF EMPLOYEES FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE PROVINCE OF ONTARIO IN THE PIPELINES SECTOR." (NO EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE APPLICANT, RESPONDENT AND INTERVENER THAT THE KIND OF WORK PRESENTLY PERFORMED UNDER THE UTILITIES CONTRACTORS COLLECTIVE AGREEMENTS WILL CONTINUE TO BE PERFORMED UNDER THOSE COLLECTIVE AGREEMENTS AND THE KIND OF WORK PRESENTLY PERFORMED UNDER PIPELINE CONTRACTORS COLLECTIVE AGREEMENTS WILL CONTINUE TO BE PERFORMED UNDER THOSE COLLECTIVE AGREEMENTS.).

1052-71-R: PIPE LINE CONTRACTORS ASSOCIATION OF CANADA (APPLICANT) V. UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPE FITTING INDUSTRY OF THE UNITED STATES & CANADA, AND ITS LOCALS 46, 628, 663 AND 254 (RESPONDENT).

UNIT: "ALL EMPLOYERS OF EMPLOYEES FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE PROVINCE OF ONTARIO IN THE PIPELINES SECTOR." (NO EMPLOYEES IN THE UNIT).

1741-71-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) V. BEST FORM BRASSIERE COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN CORNWALL, ONTARIO SAVE AND EXCEPT FOREMEN, FORELADIES, THOSE ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE, CLERICAL AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED FOR THE SUMMER VACATION PERIOD." (34 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

[1972] 2 OLRB M.R. - PAGE 785.

1910-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE COUNTY OF MIDDLESEX (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT WORKING AT THE HEAD OFFICE AND ALL TECHNICAL EMPLOYEES OF THE ROADS DEPARTMENT OF THE RESPONDENT, SAVE AND EXCEPT ASSISTANT ENGINEER, CLERK, TREASURER, SURVEY PARTY CHIEFS, PERSONS ABOVE THE RANK OF ASSISTANT ENGINEER, CLERK, TREASURER AND SURVEY PARTY CHIEF, AND SECRETARY TO THE COUNTY CLERK." (16 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

[1972] 2 OLRB M.R. - PAGE 801.

1988-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CONVALODGE NURSING HOME (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT LICENSED MEDICAL STAFF, REGISTERED NURSES, OFFICE SUPERVISOR, MAINTENANCE SUPERVISOR, ADMINISTRATOR, CHEF MANAGER, DIETITIAN, DIRECTOR OF NURSING SERVICES, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (54 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2083-72-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. ALLBRIGHT PLATERS LIMITED (RESPONDENT) V. ALLBRIGHT PLATERS EMPLOYEE'S UNION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (93 EMPLOYEES IN THE UNIT).

[1972] 2 OLRB M.R. - PAGE 784.

2100-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. HYDE PARK NURSING HOME LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT SUPERVISORS, THOSE ABOVE THE RANK OF SUPERVISOR AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2145-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION #493 (APPLICANT) V. NOR-PIPE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (55 EMPLOYEES IN THE UNIT).

2170-72-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. MIDDLETON TRANSPORT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF HUNTSVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

2174-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 249 KINGSTON ONTARIO (APPLICANT) V. MEADOWBROOK GARDENS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

2204-72-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. THE TORONTO HUMANE SOCIETY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SHELTER MANAGER, PERSONS ABOVE THE RANK OF SHELTER MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT VETERINARY SERVICE PERSONNEL, LICENCE COLLECTORS, EMPLOYEES IN THE LICENCE DEPARTMENT, EMPLOYEES IN THE INVESTIGATION DEPARTMENT, AND THE SPECIAL CONSTABLE ARE NOT INCLUDED IN THE BARGAINING UNIT.).

2206-72-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 540 (APPLICANT) V. INDUSTRIAL STEELFAB DIVISION OF STEWARTS AND LLOYDS OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GEORGETOWN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES AND OFFICE STAFF, RADIOGRAPHY TECHNICIANS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2210-72-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 787 (APPLICANT) V. THE PUBLIC UTILITIES COMMISSION OF ST. THOMAS, ONTARIO (RESPONDENT).

UNIT: "ALL OFFICE AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT ST. THOMAS, SAVE AND EXCEPT THE SUPERINTENDENT, ACCOUNTANT, CONFIDENTIAL SECRETARY TO THE GENERAL MANAGER, TECHNICAL CO-ORDINATOR, AND PERSONS ABOVE THE RANK OF SUPERINTENDENT OR ACCOUNTANT." (19 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2225-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. D. L. STEPHENS CONTRACTING NIAGARA LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND ALL EMPLOYEES OF THE RESPONDENT IN THE SAID AREA ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (26 EMPLOYEES IN THE UNIT).

2228-72-R: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (APPLICANT) V. CITICAR LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT DISPATCHER, PERSONS ABOVE THE RANK OF DISPATCHER, AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

2230-72-R: THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. PATIDA SERVICES LTD. (RESPONDENT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT PEMBROKE, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

[1972] 2 OLRB M.R. - PAGE 793. (BARGAINING UNIT #1 - SEE BARGAINING UNITS DISMISSED - NO VOTE CONDUCTED).

2238-72-R: TEAMSTERS UNION LOCAL 990 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. KELLOUGH'S DAIRY (GERALDTON) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF GERALDTON, SAVE AND EXCEPT SALES MANAGER, PERSONS ABOVE THE RANK OF SALES MANAGER AND OFFICE STAFF." (1 EMPLOYEE IN THE UNIT).

2248-72-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. YORK TRADING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

2249-72-R: SUPERIOR CONTINENTAL CANADA EMPLOYEES ASSOCIATION (APPLICANT) V. SUPERIOR CONTINENTAL CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STRATFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (45 EMPLOYEES IN THE UNIT).

2251-72-R: OIL & GAS BURNER TECHNICIANS LOCAL UNION 1267 (APPLICANT) V. GARLAND COMMERCIAL RANGES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, CLERICAL, SALES AND PARTS DEPARTMENT STAFFS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (44 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2255-72-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (APPLICANT) V. DRUMMOND BUSINESS FORMS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ORANGEVILLE, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY AND OFFICE AND SALES STAFF." (39 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

[1972] 2 OLRB M.R. - PAGE 782.

2272-72-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO 124 (APPLICANT) V. WISMACH DECOR REG'D. (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS APPRENTICES' IN THE EMPLOY OF

THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

2273-72-R: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (APPLICANT) V. BELLE CLEANERS AND LAUNDERERS LIMITED (RESPONDENT).

UNIT: "ALL DRIVER-SALESMEN OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF BELLEVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

2277-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. GAYDON CONTRACTORS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2288-72-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. WHOLESALE HOMES LIMITED (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BLIND RIVER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (61 EMPLOYEES IN THE UNIT).

2289-72-R: DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. NEWMAN STRUCTURAL STEEL LIMITED (RESPONDENT).

UNIT: "ALL DRAFTSMEN EMPLOYED BY THE RESPONDENT AT WELLAND, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, EMPLOYEES ON TRAINING PROGRAMS AND OFFICE, ESTIMATING AND SALES STAFF." (17 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE TERM "ESTIMATING STAFF" DOES NOT INCLUDE DRAFTSMEN WHO ARE OCCASIONALLY ASSIGNED TO ASSIST IN THAT AREA.).

2290-72-R: DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O.-C.L.C. (APPLICANT)

V. MCCONKEY AND BANWELL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES ENGAGED AS DRAFTSMEN AND APPRENTICE DRAFTSMEN, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (8 EMPLOYEES IN THE UNIT).

2297-72-R: LUMBER AND SAWMILL WORKERS' UNION LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. FONTAINE LUMBER COMPANY LIMITED, (FORMERLY POLAR LUMBER COMPANY LIMITED) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS WOODS OPERATIONS IN THE TOWNSHIP OF FUSHIMI AND THOSE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND SCALERS." (20 EMPLOYEES IN THE UNIT).

2301-72-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. HOME BREAD BAKERY, A DIVISION OF CANADIAN FOOD PRODUCTS SALES LIMITED (RESPONDENT) V. BAKERY & CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 181 (INTERVENER).

UNIT: "ALL DRIVERS AND SHIPPERS OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (70 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF ALL OF THE PARTIES).

2302-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. HAMILTON SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT ASSISTANT KENNEL MASTER, PERSONS ABOVE THE RANK OF ASSISTANT KENNEL MASTER, THE CONFIDENTIAL SECRETARY TO THE MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (19 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2307-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF HEARST (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

2310-72-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. RULE-BILT LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES

OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

2311-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. A. K. PENNER & SONS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS, CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

2315-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION #38 (APPLICANT) V. KANDRACS CONSTRUCTION COMPANY (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

2317-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. GERARD CONSTRUCTION (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF PAPINEAU IN THE DISTRICT OF NIPISSING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (16 EMPLOYEES IN THE UNIT).

2326-72-R: OPERATIVE PLASTERER'S AND CEMENT MASON'S INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124 (APPLICANT) V. BALL BROTHERS LIMITED (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2337-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. IVEY DREGER CONST. LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2346-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793

(APPLICANT) V. RILIBROTHER FORMING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

2348-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 (APPLICANT) V. 240383 INVESTMENTS LIMITED (CARRYING ON BUSINESS UNDER THE NAME D & D FORMING) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATIONS OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2349-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. BURGANDY BUILDING SYSTEMS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

2350-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. FINCH FORMING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

2351-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MANCO FORMING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PELL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO. ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAIN OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2352-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ILENA CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PELL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

2353-72-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. VISCOUNT FOODS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, SALES AND OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (21 EMPLOYEES IN THE UNIT).

2362-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. CAYUGA MATERIALS & CONSTRUCTION CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CALEDONIA, SAVE AND EXCEPT DISPATCHERS, FOREMEN, PERSONS ABOVE THE RANKS OF DISPATCHER AND FOREMAN, AND OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

2368-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. SENECA MANUFACTURING (ST. CATHARINES) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NIAGARA-ON-THE-LAKE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE TRAINING BASIS WITH A COLLEGE OR UNIVERSITY." (79 EMPLOYEES IN THE UNIT).

2371-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA,

LOCAL 2486 (APPLICANT) V. GERARD CONSTRUCTION (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF PAPINEAU IN THE DISTRICT OF NIPISSING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2372-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. THIRD GENERATION REALTY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

2379-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. JOHN DONOFRIO LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (8 EMPLOYEES IN THE UNIT).

2392-72-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. DEMIK CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS, CARPENTERS, CARPENTERS' APPRENTICES AND CEMENT FINISHERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2393-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. ONTARIO FORMWORK LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2394-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. HI-WAY CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE

COUNTIES OF BRANT AND NORFOLK, AND ALL EMPLOYEES OF THE RESPONDENT IN THE SAID AREA ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULL-DOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

2395-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. BRAMALEA GENERAL CONTRACTING (PEEL) LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

2397-72-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. DEMIK CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES, CONSTRUCTION LABOURERS AND CEMENT FINISHERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

2398-72-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. DROGE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2403-72-R: INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. MERCURY MARINE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS PIPE DIVISION AT MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT THE APPLICANT AND THE RESPONDENT." (36 EMPLOYEES IN THE UNIT).

2404-72-R: RETAIL CLERKS UNION, LOCAL 486 (APPLICANT) V. OTTAWA CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL MAINTENANCE EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF THE RETAIL STORES AT 1980 BASELINE ROAD AND AT QUEENSWAY AND BLAIR ROAD, OTTAWA, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (10 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2428-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. BERHOLD INVESTMENTS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2440-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA - LOCAL 527 (APPLICANT) V. STEPHEN SURA (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

1697-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) V. CANADIAN UNION OF COMMUNICATION WORKERS (INTERVENER #1) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN KINGSTON TOWNSHIP, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, REGISTERED NURSES, TECHNICAL OFFICE AND CLERICAL EMPLOYEES, AND SECURITY GUARDS." (132 EMPLOYEES IN THE UNIT). (THE BOARD FURTHER STATED IN ITS DECISION DATED MARCH 24TH, 1972: 7. "THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS INSTALLERS ARE NOT INCLUDED IN THE VOTING CONSTITUENCY." 8. "THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT THE EXCLUSION OF TECHNICAL EMPLOYEES ARE THOSE TECHNICAL EMPLOYEES EMPLOYED BY THE RESPONDENT IN ITS OFFICE." THE BOARD STATES IN ITS FURTHER DECISION DATED JULY 25TH, 1972: 7. "...THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE REPRESENTATION VOTE BE SEALED PENDING THE FURTHER DIRECTION OF THE BOARD.").

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	210
NUMBER OF PERSONS WHO CAST BALLOTS	188
NUMBER OF BALLOTS EXCLUDING SEGREGATED	
BALLOTS CAST BY PERSONS WHOSE NAMES	
APPEAR ON VOTERS' LIST	184
NUMBER OF SEGREGATED BALLOTS CAST	
BY PERSONS WHOSE NAMES DO NOT	
APPEAR ON VOTERS' LIST	4
BALLOT BOX SEALED	

1959-72-R: KRAUS CARPET EMPLOYEES ASSOCIATION (APPLICANT) V. KRAUS CARPET MILLS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (166 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	138
NUMBER OF PERSONS WHO CAST BALLOTS	121
NUMBER OF BALLOTS EXCLUDING SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES APPEAR ON VOTERS' LIST	118
NUMBER OF SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES DO NOT APPEAR ON VOTERS' LIST	3

BALLOT BOX SEALED

2187-72-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. VALEWOOD PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RENFREW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (37 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	34
NUMBER OF PERSONS WHO CAST BALLOTS	27
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1/
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	10

2299-72-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LIN-CRAFT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LINDSAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (28 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	22
NUMBER OF PERSONS WHO CAST BALLOTS	21
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	13
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	8

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

1854-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. MODERN BUILDING CLEANING, DIVISION OF DUSTBANE ENTERPRISES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS BRANCH AT THE SENSENBRENNE HOSPITAL AT KAPUSKASING, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	9
NUMBER OF PERSONS WHO CAST BALLOTS	8
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

2011-72-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ALLAN G. COOK LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (38 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	33
NUMBER OF PERSONS WHO CAST BALLOTS	31
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	18
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	12

2027-72-R: BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL No. 30 (APPLICANT) V. TRENTON MASONRY COMPANY (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		9
NUMBER OF PERSONS WHO CAST BALLOTS		8
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3	

2157-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE F. J. DAVEY HOME FOR THE AGED (ALGOMA) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (19 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		18
NUMBER OF PERSONS WHO CAST BALLOTS		7
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

2158-72-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. PEEL MEMORIAL HOSPITAL (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER #1) V. NURSES' ASSOCIATION PEEL MEMORIAL HOSPITAL (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHIEF ENGINEER, OFFICE STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF OPERATING ENGINEERS." (119 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		62
NUMBER OF PERSONS WHO CAST BALLOTS	39	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	38	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

2226-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V.
PETER'S WELDING COMPANY (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN METROPO-
LITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF
PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON
IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY
OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE
THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING AUGUST

NO VOTE CONDUCTED

1453-71-R: S.E.U. LOCAL 204 AFFILIATED WITH THE A.F. OF L., C.I.O.,
C.L.C. (APPLICANT) V. ELRU PAYROLL COMPANY LIMITED (RESPONDENT).
(NO EMPLOYEES).

1913-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL UNION 1669 (APPLICANT) V. "THE ACRES" A DIV. OF STAN DOLYNY
LTD. (RESPONDENT). (NO EMPLOYEES).

2036-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CONCORDE
MAINTENANCE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).
(7 EMPLOYEES).

2160-72-R: SERVICE EMPLOYEES UNION LOCAL 268 AFFILIATED WITH THE
S.E.I.U. AF OF L., C.I.O., & C.L.C. (APPLICANT) V. THE CORPORATION
OF THE TOWNSHIP OF TERRACE BAY (RESPONDENT). (4 EMPLOYEES).

2230-72-R: THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION,
LOCAL 261, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. PATIDA SERVICES LTD.
(RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT PEMBROKE, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

[1972] 2 OLRB M.R. - PAGE 793. (BARGAINING UNIT #2 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

2278-72-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. OLYMPIA AND YORK DEVELOPMENTS LIMITED (RESPONDENT). (7 EMPLOYEES).

2305-72-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. CAYUGA MATERIALS & CONSTRUCTION CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR OUT OF THE COMPANY OPERATION ON HIGHWAY 3 AT R.R.#4, CAYUGA IN THE TOWNSHIP OF NORTH CAYUGA, COUNTY OF HALDIMAND, SAVE AND EXCEPT FOREMEN, DISPATCHERS, PERSONS ABOVE THE RANKS OF FOREMAN AND DISPATCHER, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (118 EMPLOYEES IN THE UNIT). (HAVING REGARD FOR THE AGREEMENT OF THE PARTIES).

2308-72-R: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION LOCAL 261, A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. THE ALEXANDRA HOTEL (RESPONDENT). (51 EMPLOYEES).

2317-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION #38 (APPLICANT) V. STEED AND EVANS, A DIVISION OF STEED AND EVANS LIMITED (RESPONDENT). (16 EMPLOYEES).

2332-72-R: LOCAL 787 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) V. GRINNELL FIRE PROTECTION SYSTEMS CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND ENGINEERING STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND THE APPLICANT." (13 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2354-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. SIMAT (SAM) UTIVICH OPERATING AS TRANS-CANADA CONSTRUCTION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (2 EMPLOYEES).

2360-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. K & R READI-MIX (1971) LIMITED (RESPONDENT) V. TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWNSHIP OF NORTH CAYUGA IN THE COUNTY OF HALDIMAND, SAVE AND EXCEPT DISPATCHER, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

1893-72-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. CANADA GLAZED PAPERS LIMITED (RESPONDENT) V. PRINTING SPECIALTIES & PAPER PRODUCTS UNION, LOCAL 466 (INTERVENER #1) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER #2).

VOTING CONSTITUENCY: "WORKING CHIEF ENGINEERS, ALL STATIONARY ENGINEERS AND PERSONS ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT, SAVE AND EXCEPT THE CHIEF ENGINEER, PROBATIONARY EMPLOYEES, AND PERSONS HAVING THE RANK OF FOREMAN AND ABOVE." (5 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5

BALLOT BOX SEALED

2161-72-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. MOLDEX LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT BARRIE, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (43 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	47
NUMBER OF PERSONS WHO CAST BALLOTS	42
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	18
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	24

2261-72-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. CONSOLIDATED BUILDING MAINTENANCE COMPANY, DIVISION OF CONSOLIDATED MAINTENANCE SERVICES LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE T. EATON CO. LTD. AT ITS QUEEN STREET, COLLEGE STREET, DON MILLS, SHERWAY GARDENS, SHOPPER'S WORLD AND YORKDALE SHOPPING CENTRE STORES IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND SUPERVISOR, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (200 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	191
NUMBER OF PERSONS WHO CAST BALLOTS	141
NUMBER OF SPOILED BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	60
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	78

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

1543-71-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1962 (APPLICANT) V. THE UNIVERSITY OF WESTERN ONTARIO (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL SECURITY GUARDS EMPLOYED BY THE RESPONDENT AT LONDON, ONTARIO, SAVE AND EXCEPT CORPORALS, PERSONS ABOVE THE RANK OF CORPORAL, PERSONS EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (40 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	17
NUMBER OF PERSONS WHO CAST BALLOTS	15
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	12

2121-72-R: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 532 (APPLICANT) V. ST. GEORGE NURSING HOME (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, ONTARIO, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	9
NUMBER OF PERSONS WHO CAST BALLOTS	0

2135-72-R: INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (APPLICANT) V. HOLIDAY INN OF OSHAWA OF THE COMMONWEALTH HOLIDAY INNS OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS INN AT OSHAWA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR."

SECURITY STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS INCLUDED IN THE BARGAINING UNIT DEFINED BY THE BOARD IN AN APPLICATION BETWEEN THE PARTIES IN THIS MATTER, IN ITS DECISION DATED JUNE 19, 1972." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

2171-72-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO, CLC (APPLICANT) V. CANADA DRY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL ADVANCE SALESMEN, DELIVERY MEN, DELIVERYMEN'S HELPERS, SALESMEN, DISPATCHERS AND TELEPHONE SALES EMPLOYEES EMPLOYED BY THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (87 EMPLOYEES IN THE UNIT). (THE BOARD FURTHER STATED IN ITS DECISION DATED JULY 21ST, 1972: "... THAT TRANSPORT DRIVERS AND VENDING SERVICEMEN ARE NOT INCLUDED IN THE BARGAINING UNIT.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	56
NUMBER OF PERSONS WHO CAST BALLOTS	48
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	11
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	37

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING AUGUST

2235-72-R: TORONTO GRAPHIC ARTS COUNCIL OF UNIONS (APPLICANT) V. THE NATIONAL CASH REGISTER COMPANY OF CANADA, LIMITED (RESPONDENT) V. CANADIAN BUSINESS MACHINE WORKERS' UNION (INTERVENER). (97 EMPLOYEES).

2343-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 249 KINGSTON ONTARIO (APPLICANT) V. TRIPP CONSTRUCTION LIMITED (RESPONDENT). (23 EMPLOYEES).

2373-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. ROBERTSON-IRWIN LTD. (RESPONDENT). (6 EMPLOYEES).

2378-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. MID-NORTH WINDOW CENTRE LTD. (RESPONDENT). (2 EMPLOYEES).

2416-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. GENERAL CRANE INDUSTRIES LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (3 EMPLOYEES).

2417-72-R: CSAO NATIONAL (INC.) (APPLICANT) V. SUDBURY GENERAL HOSPITAL (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1023 - C.L.C. (INTERVENER). (24 EMPLOYEES).

2439-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. NORTHLAND BITULITHIC LIMITED (RESPONDENT). (4 EMPLOYEES).

2472-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. VICTOR H. BURT ELECTRICAL SYSTEMS (RESPONDENT). (1 EMPLOYEE).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING AUGUST

2165-72-R: MRS. IRENE CALVERLEY (APPLICANT) V. INTERNATIONAL UNION AUTO WORKERS LOCAL 1297 (RESPONDENT) V. NORTH AMERICAN ROCKWELL OF CANADA LTD. (FORMERLY CANADIAN MOTOR LAMP SUBSIDIARY OF NORTH AMERICAN ROCKWELL CORP.) (INTERVENER). (GRANTED).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF AMERICAN ROCKWELL OF CANADA LTD. (FORMERLY CANADIAN MOTOR LAMP SUBSIDIARY OF NORTH AMERICAN ROCKWELL CORP.) AT OTTER LAKE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SECRETARY TO THE PLANT MANAGER, SECRETARY TO THE CONTROLLER, GENERAL ACCOUNTANT, COST AND BUDGET ANALYST, EMPLOYEES OF THE PERSONNEL DEPARTMENT, PLANT ENGINEER, FIRST AID ATTENDANTS." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'

LIST

7

NUMBER OF PERSONS WHO CAST BALLOTS

7

NUMBER OF BALLOTS MARKED IN FAVOUR

OF RESPONDENT

0

NUMBER OF BALLOTS MARKED AGAINST

RESPONDENT

7

2220-72-R: KLAUS PETE NEOMANN, ILSE-MARIE LOEWIGKEIT, G. ROCHON, J. SWIMMER, JOSEF ROHRER, JOYCE HORENSMA, HELGA BARBIER, BENJAMIN E. OSBOPNE AND MATTHEW AJALA (APPLICANTS) V. TORONTO TYPOGRAPHICAL UNION, No. 91 (RESPONDENT). (9 EMPLOYEES). (GRANTED).

2363-72-R: LLOYD MURDOCK & DONALD CURRIE (APPLICANTS) v. READY-MIX BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS, TEAMSTERS LOCAL UNION No. 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (RESPONDENT) v. #232835, CONCRETE LIMITED (INTERVENER). (8 EMPLOYEES). (GRANTED).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

AUGUST

2107-72-R: LOCAL 2345 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L. C.I.O. C.L.C. (APPLICANT) v. THE HYDRO-ELECTRIC COMMISSION OF THE CORPORATION OF THE TOWN OF HESPELER (RESPONDENT) v. LOCAL UNION 804 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L. C.I.O. C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

2108-72-R: LOCAL 2345 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L. C.I.O. C.L.C. (APPLICANT) v. THE PUBLIC UTILITIES COMMISSION OF THE CORPORATION OF THE CITY OF GALT (RESPONDENT) v. LOCAL UNION 804 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L. C.I.O. C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

2109-72-R: LOCAL 2345 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L. C.I.O. C.L.C. (APPLICANT) v. THE PUBLIC UTILITY COMMISSION OF THE CITY OF WOODSTOCK (RESPONDENT) v. LOCAL UNION 804 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L. C.I.O. C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

AUGUST

2413-72-U: LAKESHORE DIE CASTING LIMITED (APPLICANT) v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA LOCAL 553 (UE) (RESPONDENT). (WITHDRAWN).

2423-72-U: LAKESHORE DIE CASTING LIMITED (APPLICANT) v. R. BALLANTINE, J. BASTIEN, R. BAXTER, D. GOLKA, R. GUENETTE, K. HARE, R. LANGILLE, R. LIZOTTE, S. MICHAUD, H. MUISE, J. MARUSIS, M. PEDERSON, G. SINGH, H. SINGH, M. SINGH, E. STAHLBAUM, AND J. WROBEL (RESPONDENTS). (WITHDRAWN).

2437-72-U: FOUNDATION GENERAL ENGINEERING CONSTRUCTION, A DIVISION OF THE FOUNDATION COMPANY OF CANADA LIMITED (APPLICANT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA ONTARIO PROVINCIAL DISTRICT COUNCIL, ON BEHALF OF ITS AFFILIATED LOCAL UNIONS, ET AL (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING AUGUST

2115-72-U: CANADIAN ELEVATOR MANUFACTURERS, A DIVISION OF CANADIAN ELECTRICAL MANUFACTURERS ASSOCIATION (APPLICANT) V. INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL UNION 90 (RESPONDENT). (GRANTED).

2136-72-U: CANADIAN ELEVATOR MANUFACTURERS, A DIVISION OF CANADIAN ELECTRICAL MANUFACTURERS ASSOCIATION (APPLICANT) V. INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL UNION NO. 50 (RESPONDENT). (WITHDRAWN).

2268-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES - C.L.C. ONTARIO HYDRO EMPLOYEES' UNION LOCAL 1000 (APPLICANT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT). (WITHDRAWN).

2274-72-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. MINAKI MARINA (RESPONDENT). (WITHDRAWN).

2448-72-U: J. G. FITZPATRICK CONSTRUCTION LTD. (APPLICANT) V. MICHAEL REILLY (RESPONDENT). (WITHDRAWN).

2449-72-U: J. G. FITZPATRICK CONSTRUCTION LTD. (APPLICANT) V. WILLIAM LESLIE BEAZER ET AL (RESPONDENT). (WITHDRAWN).

2459-72-U: J. G. FITZPATRICK CONSTRUCTION LTD. (APPLICANT) V. MICHAEL REILLY (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE (HOSPITAL ARBITRATION ACT)DISPOSED OF DURING AUGUST

13-72-PH: VERSAFOOD SERVICES LIMITED (FOOD MANAGEMENT SERVICES) (APPLICANT) V. CANADIAN UNION OF GENERAL EMPLOYEES (RESPONDENT). (WITHDRAWN).

14-72-PH: VERSAFOOD SERVICES LIMITED (FOOD MANAGEMENT SERVICES) (APPLICANT) V. TED DYJAS, MIKE TALPA, MARY PSYCH, ELLEN TANTALO, TOM WOOD, RAYMOND ZABLONCKIS (RESPONDENTS). (WITHDRAWN).

16-72-PH: VERSAFOOD SERVICES LIMITED (FOOD MANAGEMENT SERVICES) (APPLICANT) V. PATRICK MURPHY (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)DISPOSED OF DURING AUGUST

1308-71-U: PERCY WOODS (COMPLAINANT) V. LOCAL 4912 OF THE UNITED STEEL WORKERS (RESPONDENT). (DISMISSED).

1406-71-U: DENNIS H. O'KEEFE LEDGER No. 64300 TEAMSTERS CHAUFFEURS WAREHOUSE & HELPERS LOCAL UNION 880 WINDSOR, ONT. (COMPLAINANT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS UNION, LOCAL 880, WILFRED P. MAY, PRESIDENT, RYANCRETE-STERLING PRODUCTS, WINDSOR, ONTARIO, A DIVISION OF LAKE ONTARIO CEMENT LIMITED, TORONTO, ONTARIO (RESPONDENTS). (DISMISSED).

1799-71-U: DOROTHE ELLENS (COMPLAINANT) V. SERVICE EMPLOYEES' UNION, LOCAL 204 (RESPONDENT). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 770.

1936-72-U: INTERNATIONAL MOLDERS' AND ALLIED WORKERS' UNION (COMPLAINANT) V. BLOW MOLD TOOLING (1972) LIMITED, HERMANN TOPOLSEK AND WESLEY A. MITROVICH (RESPONDENTS). (DISMISSED).

2009-72-U: WILLIAM R. BROADLEY (COMPLAINANT) V. GATES RUBBER OF CANADA LTD. (RESPONDENT). (DISMISSED).

2062-72-U: PETER VERMIST AND ROMAN PRYBYTKIVSKY (COMPLAINANTS) V. UAW LOCAL 1408 AND GENERAL IMPACT EXTRUSIONS (MFG) LTD. (RESPONDENTS). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 798.

2085-72-U: THE CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. CONVALODGE NURSING HOME (RESPONDENT). (GRANTED).

[1972] 2 OLRB M.R. - PAGE 802.

2112-72-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. GIDON INDUSTRIES LIMITED (RESPONDENT). (WITHDRAWN).

2213-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. HYDE PARK NURSING HOME LTD. (RESPONDENT). (WITHDRAWN).

2216-72-U: NURSES' ASSOCIATION OF LAKEHEAD REGIONAL SCHOOL OF NURSING (COMPLAINANT) V. LAKEHEAD REGIONAL SCHOOL OF NURSING (RESPONDENT). (WITHDRAWN).

2217-72-U: SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204 (COMPLAINANT) V. ROBERT CRUIKSHANK CLEANING CONTRACTORS (RESPONDENT). (WITHDRAWN).

2232-72-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. HENDRICKSON MANUFACTURING (CANADA) LTD. (RESPONDENT). (WITHDRAWN).

2242-72-U: ROBERT EDWARD REEVE (COMPLAINANT) V. LOCAL 127 UNITED AUTO WORKERS UNION (RESPONDENT). (WITHDRAWN).

2244-72-U: FREDERICK RICHARD & BOB CRAWFORD (COMPLAINANT) V. UNITED ASSOCIATION OF JOURNEYMAN & APPRENTICES OF THE PLUMBING & PIPE FITTING INDUSTRY OF THE UNITED STATES & CANADA (RESPONDENT). (WITHDRAWN).

2263-72-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. K.M.W. PRODUCTS LIMITED (RESPONDENT). (WITHDRAWN).

2333-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. ST. JOSEPH'S VILLA (RESPONDENT). (WITHDRAWN).

2399-72-U: NORMAN BEAUVAIS (COMPLAINANT) V. GREATER CORNWALL TEXTILE & T.C.F. CANADA LTD. JOINT BOARD (RESPONDENT). (WITHDRAWN).

APPLICATION UNDER SECTION 10 (FORMERLY S. 8(B)) (RIGHT OF ACCESS)

2432-72-M: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MILLER PAVING LIMITED (RESPONDENT). (DISMISSED).

APPLICATIONS UNDER SECTION 39 (FORMERLY S. 35(A)) DISPOSED OF DURING

AUGUST

125-70-M: CLARA OVERBEEK (APPLICANT) V. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. of L., C.I.O., C.L.C. (RESPONDENT TRADE UNION) V. THE CORPORATION OF THE COUNTY OF MIDDLESEX (RESPONDENT EMPLOYER). (GRANTED).

1956-72-M: MRS. HENNY ANNE (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT TRADE UNION) V. THE ELGIN COUNTY BOARD OF EDUCATION (RESPONDENT EMPLOYER). (GRANTED).

1969-72-M: THOMAS HUNSE (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW), LOCAL 199 (RESPONDENT TRADE UNION) V. GENERAL MOTORS OF CANADA LIMITED (RESPONDENT EMPLOYER). (GRANTED).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

2267-72-M: ALPINE BRAND MEAT PRODUCTS LIMITED (EMPLOYER) V. LOCAL UNION 633 OF THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (TRADE UNION). (GRANTED).

2331-72-M: GARDEN CITY LAUNDRY LIMITED, OF ST. CATHARINES (EMPLOYER) V. LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (TRADE UNION). (GRANTED).

APPLICATION UNDER SECTION 76 (FORMERLY S. 63) (FINANCIAL STATEMENT
REQUESTED BY TRADE UNIONS MEMBER)

2130-72-M: JACK WHITE (COMPLAINANT) V. HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 (RESPONDENT). (WITHDRAWN).

APPLICATION FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))

DISPOSED OF DURING AUGUST

1846-72-M: CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 369 (APPLICANT) V. THE CORPORATION OF THE TOWN OF KAPUSKASING (RESPONDENT)

REFERENCE TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)

1851-72-M: BOARD OF EDUCATION FOR THE BOROUGH OF NORTH YORK (EMPLOYER) V. LOCAL 3219, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (TRADE UNION). (DISMISSED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

357-71-R: NURSES' ASSOCIATION MACASSA LODGE (APPLICANT) V. THE CORPORATION OF THE CITY OF HAMILTON (RESPONDENT). (REQUEST DENIED).

1577-71-R: ONTARIO HOUSING CORPORATION EMPLOYEES LOCAL 767, CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. DEL ZOTTO PROPERTY MANAGEMENT (RESPONDENT). (REQUEST DENIED).

1666-71-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. DEL ZOTTO PROPERTY MANAGEMENT (RESPONDENT). (REQUEST DENIED).

1671-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. ZEHR'S MARKETS LIMITED (RESPONDENT) V. DIAMOND "Z" ASSOCIATION (INTERVENER). (REQUEST DENIED).

[1972] 2 OLRB M.R. - PAGE 796.

1697-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) V. CANADIAN UNION OF COMMUNICATION WORKERS (INTERVENER #1) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER #2). (REQUEST DENIED).

1727-71-R: CANADIAN TEXTILE & CHEMICAL UNION (APPLICANT) V. PURETEX KNITTING Co. LIMITED (RESPONDENT). (REQUEST DENIED).

1867-72-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. FELDMAN TIMBER COMPANY LIMITED (RESPONDENT). (REQUEST DENIED).

1891-72-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. RUDOLPH MCCHESENEY LUMBER COMPANY LIMITED (RESPONDENT). (REQUEST DENIED).

2030-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. BETTER IRON WORKS LIMITED (RESPONDENT). (REQUEST DENIED).

2077-72-R: NURSES' ASSOCIATION HOTEL DIEU OF ST. JOSEPH (APPLICANT) V. THE RELIGIOUS HOSPITALLERS OF HOTEL DIEU OF ST. JOSEPH OF THE DIOCESE OF LONDON (RESPONDENT). (REQUEST DENIED).

2305-72-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. CAYUGA MATERIALS & CONSTRUCTION CO. LIMITED (RESPONDENT). (REQUEST DENIED).

2316-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION #38 (APPLICANT) V. PENINSULA MAINTENANCE CONTRACTING (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

(FORMERLY S. 65)

587-71-U: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) V. SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE LIMITED, ARMSTRONG PRODUCE COMPANY LIMITED, A.M.C. PRODUCE SHIPPERS INCORPORATED, MASTRONARDI PRODUCE LIMITED, GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE PRODUCERS MARKETING BOARD (RESPONDENTS). (REQUEST DENIED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 95(2)

(FORMERLY S. 79(2))

1422-71-M: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LIVINGSTON TRANSPORTATION LIMITED (RESPONDENT). (REQUEST DENIED).

1917-72-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 11 (APPLICANT) V. THE HYDRO ELECTRIC COMMISSION OF THE BOROUGH OF NORTH YORK (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 96(FORMERLY S. 79A)

1714-71-M: THE COUNCIL OF PRINTING INDUSTRIES OF CANADA, (REPRESENTING THE ATTACHED LIST OF EMPLOYERS) (EMPLOYER) V. TORONTO PHOTO-ENGRAVERS UNION LOCAL No. 35-P, LPIU AND LOCAL 242, HAMILTON, LPIU (TRADE UNION). (REQUEST DENIED).

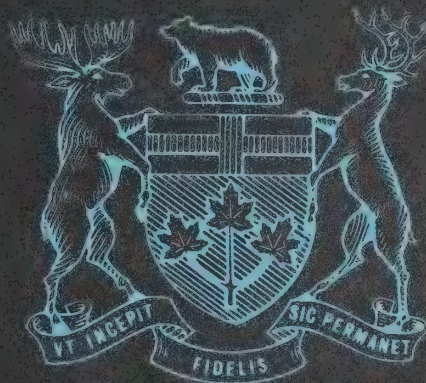


972) OLRB REP.

SEPTEMBER

PAGES 814 - 846

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054



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Monthly Report

ONTARIO LABOUR RELATIONS BOARD

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ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1972] OLRB REP.

CASES REPORTED

	PAGE
C.J.A. FOR CONSENT TO CONTINUE SUPERVISION OVER ITS L. U. No. 93, BY IN THE MATTER OF A REQUEST.....	833
DIRECT WINTERS TRANSPORTS LTD. RE FRANK SIDNEY PARRILL RE GENERAL TRUCK DRIVERS' U., L. 938.....	840
FORD MOTOR CO. OF CANADA, LTD., U.A.W., L. 200 RE DONALD G. GEBBIE & J. MICHAEL LONGMOORE.....	828
FREELANCE ERECTORS LTD. AND PATRICK DOYLE & INT'L ASSOC. OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS, L. U. 700 AND L.I.U., ONT. PROVINCIAL DISTRICT COUNCIL BY & ON BEHALF OF L.U. 506 & 625.....	818
FREEMAN ELECTRIC LTD. RE I.B.E.W., L.U. 120.....	822
INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS - L. LODGE #2330 RE NICHOLAS E. ERDELYI.....	844
IRON RANGE BUS LINES LTD. RE SERVICE EMPLOYEES U.L. 268 AFF'L S.E.I.U. AF OF L., C.I.O. & C.L.C.....	842
JAMESWAY CO. LTD. RE I.M.A.W.....	825
PRE-CON CO. AND PATRICK DOYLE & INT'L ASSOC. OF BRIDGE, STRUC- TURAL & ORNAMENTAL IRONWORKERS, L. U. No. 700.....	814
SPRUCE FALLS POWER & PAPER CO. LTD. RE P.S.P.M.W. L. 89.....	836

INDEX OF CASES

ARBITRATION - JURISDICTIONAL DISPUTE - PARTIES AGREEING UNDER
COLLECTIVE AGREEMENT TO SETTLE DIFFERENCES BY A TRIBUNALLY
MUTUALLY SELECTED BY THEM - TWO UNIONS PARTIES TO AGREE-
MENT IN QUESTION S81(14) - WHETHER BOARD WILL INQUIRE INTO
COMPLAINT.

INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL
WORKERS UNION, LOCAL 89 v. SPRUCE FALLS POWER AND PAPER
COMPANY LIMITED.....

CONSENT TO PROSECUTE - PRACTICE - WHETHER BOARDS RULES APPLY TO APPLICATION FOR CONSENT TO PROSECUTE - PRACTICE OF BOARD WHERE REQUEST MADE PRIOR TO HEARING AND WHERE NO REQUEST MADE UNTIL HEARING - DELAY IN BRINGING PROCEEDINGS - WHETHER SIX MONTH LIMITATION PERIOD MAY BE COMPLIED WITH.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 120 v. FREEMAN ELECTRIC LIMITED..... 822

DUTY OF FAIR REPRESENTATION - JURISDICTION - CONSTITUTIONAL OF LAW - UNDERTAKING OF EMPLOYER WITHIN FEDERAL JURISDICTION - WHETHER PROVINCE HAS OCCUPIED THE FIELD - NO SIMILAR RELIEF IN FEDERAL LEGISLATION - WHETHER ONTARIO BOARD HAS JURISDICTION.

FRANK SIDNEY PARRILL v. GENERAL TRUCK DRIVERS' UNION, LOCAL 938 v. DIRECT WINTERS TRANSPORT LIMITED..... 840

DUTY OF FAIR REPRESENTATION - PRACTICE - S79 - PRACTICE OF BOARD IN S79 APPLICATIONS - DISTINCTION BETWEEN SCREENING PANEL AND INQUIRY PANEL-FUNCTION OF SCREENING PANEL - WHETHER DECISION BINDING OR INQUIRY PANEL - EFFECT OF RULE 46 - WHETHER PRIMA FACIE CASE BEFORE INQUIRY PANEL-PLEADINGS - WHETHER COMPLAINT DEFICIENT - WHETHER PARTIES HAVE NOTICE OF CASE - CONSPIRACY PLEADINGS - WHETHER BOARD WILL PERMIT ADJOURNMENTS DURING COURSE OF PROCEEDINGS - DUTY TO PLEAD MATERIAL FACTS - WHETHER EMPLOYER A PROPER PARTY.

DONALD G. GEBBIE AND J. MICHAEL LONGMOORE v. UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 200; FORD MOTOR COMPANY OF CANADA, LIMITED... 828

DUTY OF FAIR REPRESENTATION - WHETHER ACTIONS OF UNION ARBITRARY DISCRIMINATORY OR IN BAD FAITH - WHETHER ANOTHER UNION MEMBERS CASE WOULD BE DEALT WITH DIFFERENTLY.

NICHOLAS E. ERDELYI v. THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS - LOCAL LODGE #2330..... 844

JURISDICTION - DUTY OF FAIR REPRESENTATION - CONSTITUTIONAL OF LAW - UNDERTAKING OF EMPLOYER WITHIN FEDERAL JURISDICTION - WHETHER PROVINCE HAS OCCUPIED THE FIELD - NO SIMILAR RELIEF IN FEDERAL LEGISLATION - WHETHER ONTARIO BOARD HAS JURISDICTION.

FRANK SIDNEY PARRILL v. GENERAL TRUCK DRIVERS' UNION, LOCAL 938 v. DIRECT WINTERS TRANSPORT LIMITED..... 840

JURISDICTIONAL DISPUTE - ARBITRATION - PARTIES AGREEING UNDER COLLECTIVE AGREEMENT TO SETTLE DIFFERENCES BY A TRIBUNALLY MUTUALLY SELECTED BY THEM - TWO UNIONS PARTIES TO AGREEMENT IN QUESTION S81(14) - WHETHER BOARD WILL INQUIRE INTO COMPLAINT.

INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS UNION, LOCAL 89 v. SPRUCE FALLS POWER AND PAPER COMPANY LIMITED.....

836

MEMBERSHIP EVIDENCE - PRACTICE - NO YEAR SHOWN AN APPLICATION AND RECEIPT - PRACTICE OF THE BOARD - WHETHER BOARD WILL ACCEPT VIVA VOCE EVIDENCE UNDER RULE 48(2) TO IDENTIFY AND SUBSTANTIATE THE WRITTEN EVIDENCE.

INTERNATIONAL MOLDERS & ALLIED WORKERS UNION v. JAMESWAY CO. LIMITED.....

825

MEMBERSHIP EVIDENCE - WHETHER CORRECT NAME OF APPLICANT GET OUT AN APPLICATION FORM - WHETHER DEFECTS SUBSTANTIAL OR TECHNICAL.

SERVICE EMPLOYEES UNION LOCAL 268 AFFILIATED WITH THE S.E.I.U. AF OF L., C.I.O. & C.L.C. v. IRON RANGE BUS LINES LIMITED.....

842

PRACTICE - CONSENT TO PROSECUTE - WHETHER BOARD RULES APPLY TO APPLICATION FOR CONSENT TO PROSECUTE - PRACTICE OF BOARD WHERE REQUEST MADE PRIOR TO HEARING AND WHERE NO REQUEST MADE UNTIL HEARING - DELAY IN BRINGING PROCEEDINGS - WHETHER SIX MONTH LIMITATION PERIOD MAY BE COMPLIED WITH.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 120 v. FREEMAN ELECTRIC LIMITED.....

822

PRACTICE - MEMBERSHIP EVIDENCE - NO YEAR SHOWN AN APPLICATION AND RECEIPT - PRACTICE OF THE BOARD - WHETHER BOARD WILL ACCEPT VIVA VOCE EVIDENCE UNDER RULE 48(2) TO IDENTIFY AND SUBSTANTIATE THE WRITTEN EVIDENCE.

INTERNATIONAL MOLDERS & ALLIED WORKERS UNION v. JAMESWAY CO. LIMITED.....

825

PRACTICE - S79 - DUTY OF FAIR REPRESENTATION - PRACTICE OF BOARD IN S79 APPLICATIONS - DISTINCTION BETWEEN SCREENING PANEL AND INQUIRY PANEL-FUNCTION OF SCREENING PANEL - WHETHER DECISION BINDING OR INQUIRY PANEL - EFFECT OF RULE 46 - WHETHER PRIMA FACIE CASE BEFORE INQUIRY PANEL-PLEADINGS - WHETHER COMPLAINT DEFICIENT- WHETHER PARTIES HAVE NOTICE OF CASE - CONSPIRACY PLEADINGS - WHETHER BOARD WILL PERMIT ADJOURNMENTS DURING COURSE OF

PROCEEDINGS - DUTY TO PLEAD MATERIAL FACTS - WHETHER
EMPLOYER A PROPER PARTY.

DONALD G. GEBBIE AND J. MICHAEL LONGMOORE v. UNITED AUTO-
MOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA, LOCAL 200; FORD MOTOR COMPANY OF CANADA, LIMITED... 828

S79 - DUTY OF FAIR REPRESENTATION - PRACTICE - PRACTICE OF
BOARD IN S79 APPLICATIONS - DISTINCTION BETWEEN SCREENING
PANEL AND INQUIRY PANEL-FUNCTION OF SCREENING PANEL -
WHETHER DECISION BINDING OR INQUIRY PANEL - EFFECT OF
RULE 46 - WHETHER PRIMA FACIE CASE BEFORE INQUIRY
PANEL-PLEADINGS - WHETHER COMPLAINT DEFICIENT - WHETHER
PARTIES HAVE NOTICE OF CASE - CONSPIRACY PLEADINGS -
WHETHER BOARD WILL PERMIT ADJOURNMENTS DURING COURSE OF
PROCEEDINGS - DUTY TO PLEAD MATERIAL FACTS - WHETHER
EMPLOYER A PROPER PARTY.

DONALD G. GEBBIE AND J. MICHAEL LONGMOORE v. UNITED AUTO-
MOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA, LOCAL 200; FORD MOTOR COMPANY OF CANADA, LIMITED... 828

STRIKE - S123 - WHETHER EVIDENCE SUFFICIENT TO ESTABLISH A
STRIKE - WHETHER PERSONS ACTED IN COMBINATION OR IN
CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING.

FREELANCE ERECTORS LIMITED v. PATRICK DOYLE AND INTER-
NATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMEN-
TAL IRONWORKERS, LOCAL UNION NO. 700 v. LABOURERS' IN-
TERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL
DISTRICT COUNCIL BY AND ON BEHALF OF LOCAL UNIONS 506
AND 625..... 818

STRIKE - S123 - WHETHER REFUSAL TO WORK BY ONE EMPLOYEE CONSTI-
TUTES A STRIKE - CEASE AND DESIST ORDER SECTION 88(2) -
WHETHER ACTIONS OF BUSINESS AGENT DEEMED TO BE ACTION OF
THE TRADE UNION.

PRE-CON COMPANY v. PATRICK DOYLE AND INTERNATIONAL ASSOCIA-
TION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL
UNION NO. 700..... 814

TRADE UNION - REQUEST BY INTERNATIONAL TO CONTINUE SUPERVISION
OVER LOCAL - FACTION ADVOCATING CREATION OF INDEPENDENT
GROUP - WHETHER ELECTED OFFICIALS ABLE TO ASSUME OFFICES
AND MANAGEMENT OF AFFAIRS OF UNION - WHETHER BOARD WILL
CONTINUE TRUSTEESHIP.

IN THE MATTER OF A REQUEST BY THE UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA FOR CONSENT TO CONTINUE
SUPERVISION OVER ITS LOCAL UNION NO. 93..... 833

WHICH THE WITNESS INTERPRETED AS A VOTE FOR MARTEL. ALAN BAZINET'S EVIDENCE IS TO THE EFFECT THAT MARTEL TOLD HIM THAT "IF YOU SIGN FOR ME, YOU WOULDN'T HAVE TO PAY THE UNION." IN THIS REGARD, HE STATED THAT MARTEL WHEN REFERRING TO THE CARD WHICH HAD BEEN FILLED IN AS INDICATED ABOVE, FURTHER STATED: "AS FOR MYSELF, I HAVE VOTED ALREADY." MARTIAL BAZINET TESTIFIED THAT MARTEL INFORMED HIM THAT IF THE UNION DIDN'T GET IN, THEN HE WOULD PAY THE SAME BENEFITS AS ONE OF ITS UNIONIZED COMPETITORS. REMI CHALIFOUX TESTIFIED THAT MARTEL TOLD HIM THAT HE WAS NOT INTERESTED IN SEEING THAT THE UNION GOT IN. CLAUDE DESROCHERS CLAIMED THAT MARTEL SUGGESTED TO HIM THAT VOTING FOR THE UNION WOULD RESULT IN COSTLY LAWYER'S FEES. LIONEL DAYON'S RECOLLECTION OF MARTEL'S STATEMENTS TO HIM WERE THAT "IF I VOTED THE RIGHT WAY HE WOULD GIVE ME A 25¢ INCREASE PLUS FOUR PAID HOLIDAYS. HE TOLD ME TO DECIDE WELL AND IF I WANTED MORE INCREASES HE PROBABLY WOULD GIVE IT TO ME LATER. GAETAN MARQUIS ATTRIBUTED THE FOLLOWING WORDS TO MARTEL AS ELICITED AT THE INTERVIEW: "IF WE VOTE ON HIS SIDE WE WOULD GET THE CONDITIONS. IF WE VOTE FOR THE UNION AND IT GETS IN, ITS OUR TOUGH LUCK." HOWEVER, EACH OF THESE WITNESSES DID SAY THAT MARTEL HAD TOLD THEM THEY WERE FREE TO VOTE FOR OR AGAINST THE UNION.

5. THE FIRST ISSUE THAT ARISES THEREFORE IS TO DETERMINE WHETHER THE CONDUCT OF THE RESPONDENT, HAVING REGARD TO ALL OF THE CIRCUMSTANCES, WAS SUCH AS TO CAUSE THE BOARD TO SET ASIDE THE REPRESENTATION VOTE CONDUCTED ON APRIL 6, 1972. HAVING REGARD TO THE TIMING OF THESE INDIVIDUALIZED INTERVIEWS, THE CONDUCT AND MANNER IN WHICH THEY WERE CONDUCTED AND TO THE VARIOUS STATEMENTS WE FIND ATTRIBUTABLE TO JEAN MARTEL THEREIN, WE ACCORDINGLY FIND THAT THE RESPONDENT'S ACTIONS WERE DELIBERATELY CALCULATED TO FRUSTRATE THE PURPOSE AND INTENT OF THE REPRESENTATION VOTE AND CONSTITUTED, IN THESE CIRCUMSTANCES, UNDUE INFLUENCE, SUCH AS TO PREVENT THE TRUE WISHES OF THE EMPLOYEES FROM BEING DISCLOSED AT THE TIME OF THE TAKING OF THE VOTE. CONSEQUENTLY, THE BOARD DIRECTS THAT THE REPRESENTATION VOTE CONDUCTED ON APRIL 6, 1972, INsofar AS IT RELATES TO THE EMPLOYEES ENGAGED IN THE MILL OPERATIONS OF THE RESPONDENT, BE HEREBY SET ASIDE.

6. THE APPLICANT, HOWEVER ALLEGES THAT A NEW REPRESENTATION VOTE WHICH MIGHT BE ORDERED BY THE BOARD WOULD NOT IN THESE CIRCUMSTANCES REFLECT THE TRUE WISHES OF THE EMPLOYEES THEREIN AND IN THIS REGARD, ON THE BASIS OF THE COUNT AND ITS MEMBERSHIP POSITION IN RELATION TO THE BARGAINING UNIT, SEEKS OUTRIGHT CERTIFICATION UNDER THE PROVISIONS OF SECTION 7(4) OF THE ACT.

7. HAVING CAREFULLY REVIEWED ALL OF THE CIRCUMSTANCES HEREIN, WE ARE NOT SATISFIED THAT THE EFFECTS OF THE CONDUCT OF JEAN MARTEL, WHICH WE HAVE FOUND TO CONSTITUTE UNDUE INFLUENCE UPON THE MINDS OF THE EMPLOYEES AS REGARDS THE ORIGINAL REPRESENTATION VOTE, WOULD BE LIKELY TO CONTINUE AND CARRY OVER INTO A NEW REPRESENTATION VOTE SUCH AS TO PREVENT THE TRUE WISHES OF THE EMPLOYEES FROM BEING DISCLOSED THEREIN. ACCORDINGLY, IN THESE CIRCUMSTANCES, WE ARE NOT PREPARED TO

EXERCISE OUR DISCRETION PERMITTED US UNDER THE PROVISIONS OF SECTION 7(4) OF THE ACT.

8. THE BOARD THEREFORE DIRECTS THAT A NEW REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES ENGAGED IN THE MILL OPERATIONS OF THE RESPONDENT IN THE BARGAINING UNIT AS DEFINED IN THE DECISION OF THE BOARD IN THIS MATTER DATED FEBRUARY 9, 1972. ALL EMPLOYEES OF THE RESPONDENT IN THE SAID BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER E. BOYER: AUGUST 31, 1972.

HAVING REGARD TO ALL OF THE EVIDENCE, I WOULD HAVE GRANTED OUTRIGHT CERTIFICATION TO THE APPLICANT UNDER THE PROVISIONS OF SECTION 7(4) OF THE LABOUR RELATIONS ACT.

2431-72-U: PRE-CON COMPANY (APPLICANT) V. PATRICK DOYLE AND INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION No. 700 (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: B. W. BINNING, R. WERRY AND R. BRADLEY FOR THE APPLICANT; JAMES HARROWER AND J. BROWN FOR THE RESPONDENTS.

DECISION OF THE BOARD: SEPTEMBER 6, 1972.

1. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 123 OF THE LABOUR RELATIONS ACT.

2. THE APPLICANT HAS THE SUBCONTRACT FOR THE ERECTION OF PRECAST ARCHITECTURAL WALL PANELS ON CANADIAN IMPERIAL BANK OF COMMERCE BUILDING PROJECT IN WINDSOR. THE EVIDENCE OF LEVERNE LIPSETT, WHO IS THE SUPER-INTENDENT FOR THE APPLICANT ON THE PROJECT, IS THAT AT 1:00 P.M. ON AUGUST 14, 1972, TEN WALL PANELS WERE DELIVERED ON THE SITE. AT ABOUT THE SAME TIME THE CRANE WHICH WAS TO BE USED TO LIFT THE PANELS ALSO ARRIVED ON THE SITE. ACCORDING TO LIPSETT, THE APPLICANT, USING A CREW COMPOSED SOLELY OF LABOURERS, PROCEEDED IMMEDIATELY TO ERECT THE PANELS.

3. LIPSETT TESTIFIED THAT AT APPROXIMATELY 2:00 P.M. WHEN THE

CREW WAS IN THE PROCESS OF ERECTING THE SECOND PANEL, PATRICK DOYLE, A BUSINESS AGENT OF THE RESPONDENT UNION, AND JAMES BROWN, A BUSINESS AGENT FOR THE LOCAL BRICKLAYERS' UNION, CAME ON THE JOB SITE. DOYLE DEMANDED THAT LIPSETT EMPLOY IRONWORKERS ON THE CREW BEING USED TO DO THE ERECTION WORK AND BROWN DEMANDED THAT LIPSETT ALSO EMPLOY A BRICKLAYER ON THE CREW. DOYLE SHOWED TO LIPSETT A COLLECTIVE AGREEMENT BETWEEN PRE-CON COMPANY, WOODSTOCK DIVISION, ERECTION DEPARTMENT AND THE RESPONDENT TRADE UNION AND ASSERTED THAT BY THE TERMS OF THAT AGREEMENT THE APPLICANT WAS REQUIRED TO EMPLOY IRONWORKERS TO DO THE ERECTION WORK. LIPSETT'S EVIDENCE IS THAT HE ADVISED BOTH MEN THAT HIS INSTRUCTIONS WERE TO USE ONLY LABOURERS ON THE CREW AND THAT ANY CHANGE IN THE COMPOSITION OF THE CREW WOULD HAVE TO BE MADE BY HIS SUPERIOR. DOYLE ASKED HIM TO TELEPHONE HIS SUPERIOR BUT LIPSETT DECLINED TO DO SO.

4. LIPSETT TESTIFIED THAT DOYLE AND BROWN IMMEDIATELY THEREAFTER COMMENCED TO PICKET THE JOB SITE CARRYING SIGNS WHICH READ TO THE EFFECT THAT THE JOB WAS UNFAIR TO THE BUILDING TRADES. THE EVIDENCE OF BOTH LIPSETT AND CAMERON DOBSON, WHO WAS EMPLOYED BY THE APPLICANT AS A PUSHER ON THE PROJECT, IS THAT DOYLE SHORTLY THEREAFTER WENT TO THE CRANE OPERATOR AND TOLD HIM TO MAKE SURE THE SECOND PANEL WAS SAFE BUT NOT TO ERECT ANY MORE PANELS. THE CRANE OPERATOR FOLLOWED THESE INSTRUCTIONS. LIPSETT ALSO TESTIFIED THAT AN IRONWORKER IN THE EMPLOY OF VICTORIA STEEL PRODUCTS LIMITED WHO WAS WORKING ON THE PROJECT WHEN DOYLE AND BROWN SET UP THEIR PICKET LINE ON AUGUST 14TH WENT OVER AND SPOKE TO DOYLE AND THEN JOINED THEM ON THE LINE ABOUT HALF AN HOUR LATER.

5. THE EVIDENCE OF LIPSETT IS THAT THE PICKET LINE WAS AGAIN SET UP AT 7:30 A.M. ON AUGUST 15, 1972. BOTH DOYLE AND BROWN AS WELL AS FOUR OTHER PERSONS WERE ON THE LINE. THE LABOURERS IN THE EMPLOY OF THE APPLICANT WERE ALREADY ON THE SITE AND CONTINUED TO WORK. ACCORDING TO LIPSETT, WHEN THE CRANE OPERATOR ARRIVED AT THE SITE AT 8:00 A.M. HE REFUSED TO CROSS THE PICKET LINE AND DID NOT WORK THAT DAY. ALSO, LIPSETT TESTIFIED THAT NO IRONWORKERS IN THE EMPLOY OF VICTORIA STEEL PRODUCTS LIMITED WORKED ON AUGUST 15TH. A PICKET LINE APPEARED ONCE MORE ON THE PROJECT AT 7:30 A.M. ON AUGUST 16, 1972. DOYLE AND BROWN AGAIN WERE AMONG THE PICKETERS. THE PICKET LINE DISBANDED, HOWEVER, AT 10:00 A.M. THAT DAY. LIPSETT TESTIFIED THAT TWO IRONWORKERS IN THE EMPLOY OF VICTORIA STEEL PRODUCTS LIMITED CAME ON TO THE JOB SITE AND PROCEEDED TO WORK AFTER THE PICKET LINE WAS REMOVED. LIPSETT TESTIFIED THAT HE THEN TELEPHONED THE CRANE OPERATOR AND ADVISED HIM THAT THE PICKET LINE WAS NO LONGER AT THE SITE AND ASKED HIM TO RETURN TO WORK. THE CRANE OPERATOR AGREED TO DO SO AND ARRIVED ON THE JOB AT 12:30 P.M. AND STARTED TO WORK. ACCORDING TO LIPSETT AT THAT POINT THE TWO IRONWORKERS IN THE EMPLOY OF VICTORIA STEEL PRODUCTS LIMITED STOPPED WORKING AND PICKED UP A SIGN AND STARTED TO PICKET THE SITE. THE CRANE OPERATOR THEREUPON CEASED TO WORK AT ABOUT 12:45 P.M. AND LEFT THE PROJECT.

6. THE EVIDENCE OF LIPSETT IS THAT HE THEN TELEPHONED RON BRADLEY, THE LABOUR RELATIONS DIRECTOR OF THE APPLICANT, AND TOLD HIM WHAT HAD TRANSPIRED. ACCORDING TO LIPSETT, BRADLEY INSTRUCTED HIM TO STOP ALL WORK ON THE APPLICANT'S CONTRACT AND RETURN TO TORONTO. LIPSETT TESTIFIED THAT FOLLOWING BRADLEY'S INSTRUCTIONS HE CLOSED DOWN THE APPLICANT'S JOB ON THE PROJECT. HIS EVIDENCE IS THAT FROM AUGUST 16TH TO THE DATE OF THE BOARD HEARING ON AUGUST 29, 1972, THE APPLICANT HAD DONE NO WORK ON THE CANADIAN BANK OF COMMERCE PROJECT IN WINDSOR.

7. JAMES HARROWER, WHO APPEARED AT THE HEARING OF THE APPLICATION, ADMITTED THAT VICTORIA STEEL PRODUCTS LIMITED WAS BOUND BY A CURRENT COLLECTIVE AGREEMENT WITH THE RESPONDENT TRADE UNION COVERING THE IRONWORKERS IN ITS EMPLOY.

8. SECTION 123 OF THE ACT READS:

WHERE ON THE COMPLAINT OF AN INTERESTED PERSON, TRADE UNION, COUNCIL OF TRADE UNIONS OR EMPLOYERS' ORGANIZATION THE BOARD IS SATISFIED THAT A TRADE UNION OR COUNCIL OF TRADE UNIONS CALLED OR AUTHORIZED OR THREATENED TO CALL OR AUTHORIZE AN UNLAWFUL STRIKE OR THAT AN OFFICER, OFFICIAL OR AGENT OF A TRADE UNION OR COUNCIL OF TRADE UNIONS COUNSELLED OR PROCURED OR SUPPORTED OR ENCOURAGED AN UNLAWFUL STRIKE OR THREATENED AN UNLAWFUL STRIKE, OR THAT EMPLOYEES ENGAGED IN OR THREATENED TO ENGAGE IN AN UNLAWFUL STRIKE, IT MAY DIRECT WHAT ACTION IF ANY A PERSON, EMPLOYEE, EMPLOYER, EMPLOYERS' ORGANIZATION, TRADE UNION OR COUNCIL OF TRADE UNIONS AND THEIR OFFICERS, OFFICIALS OR AGENTS SHALL DO OR REFRAIN FROM DOING WITH RESPECT TO THE UNLAWFUL STRIKE OR THE THREAT OF AN UNLAWFUL STRIKE.

9. ALTHOUGH HARROWER APPEARED AT THE BOARD HEARING OF THE INSTANT APPLICATION, HIS POSITION IN OR RELATIONSHIP WITH THE RESPONDENT, UNION WAS NEVER ESTABLISHED. IN THESE CIRCUMSTANCES, THERE IS SOME QUESTION AS TO THE WEIGHT THAT CAN BE ATTACHED TO HIS ADMISSION THAT VICTORIA STEEL PRODUCTS LIMITED WAS BOUND BY AN EXISTING COLLECTIVE AGREEMENT WITH THE RESPONDENT TRADE UNION. THE COLLECTIVE AGREEMENT WHICH HE IDENTIFIED, HOWEVER, IS BETWEEN LOCAL 700 AND FOUR OTHER LOCALS OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS AND THE ONTARIO ERECTORS ASSOCIATION. HAVING REGARD TO THE FACT THAT THE AGREEMENT IS BINDING UPON THE MEMBERS OF THE PARTIES TO THE AGREEMENT AND VICTORIA STEEL PRODUCTS LIMITED IS SHOWN AS A MEMBER OF THE ONTARIO ERECTORS ASSOCIATION, WE ARE SATISFIED THAT VICTORIA STEEL PRODUCTS LIMITED IS BOUND BY THE COLLECTIVE AGREEMENT. THE DURATION CLAUSE OF THE AGREEMENT PROVIDES THAT THE AGREEMENT IS EFFECTIVE FROM MAY 1, 1971 UNTIL APRIL 30, 1973 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

10. WE ARE SATISFIED THAT PATRICK DOYLE WAS RESPONSIBLE FOR THE PICKET LINE WHICH WAS SET UP ON THE CANADIAN IMPERIAL BANK OF COMMERCE PROJECT AT WINDSOR ON AUGUST 14, 15 AND 16, 1972. HAVING REGARD TO THE FACT THAT DOYLE IS AN OFFICIAL OF THE RESPONDENT TRADE UNION AND THE PROVISIONS OF SECTION 88(2) OF THE ACT, THE RESPONDENT TRADE UNION IS ALSO DEEMED TO BE RESPONSIBLE FOR THE PICKET LINE ON THE PROJECT ON THE SAID DATES.

11. THE EVIDENCE IS THAT ONLY ONE IRONWORKERS EMPLOYED BY VICTORIA STEEL PRODUCTS LIMITED LEFT HIS JOB AND JOINED DOYLE AND BROWN ON THE PICKET LINE ON AUGUST 14, 1972. A STRIKE, HOWEVER, IS DEFINED IN SECTION 1(1)(M) OF THE ACT AS A CESSATION OR REFUSAL TO WORK OR TO CONTINUE TO WORK BY EMPLOYEES IN COMBINATION OR IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING. THE ACTION OF A SINGLE EMPLOYEE ALONE DOES NOT FALL WITHIN THE ABOVE DEFINITION AND ACCORDINGLY CANNOT BE CHARACTERIZED AS A STRIKE.

12. LIPSETT TESTIFIED THAT NO IRONWORKERS EMPLOYED BY VICTORIA STEEL PRODUCTS LIMITED REPORTED TO WORK ON AUGUST 15TH AND THAT TWO IRONWORKERS EMPLOYED BY THE SAID COMPANY ONLY REPORTED FOR WORK ON AUGUST 16TH WHEN THE PICKET LINE WAS REMOVED. SINCE THERE IS NO EVIDENCE BEFORE US AS TO WHEN VICTORIA STEEL PRODUCTS LIMITED HAD SCHEDULED IRONWORKERS TO WORK, THE ABOVE EVENTS BY THEMSELVES ARE NOT SUFFICIENT TO SATISFY US THAT EMPLOYEES ENGAGED IN A STRIKE. HOWEVER, WE ALSO HAVE THE UNDISPUTED EVIDENCE OF LIPSETT THAT WHEN THE CRANE OPERATOR RETURNED TO WORK AT 12:30 P.M. ON AUGUST 16, 1972, AFTER THE PICKET LINE SET UP BY DOYLE AND THE RESPONDENT TRADE UNION HAD BEEN REMOVED, THE TWO IRONWORKERS EMPLOYED BY VICTORIA STEEL PRODUCTS LIMITED WHO HAD RETURNED TO WORK LEFT THEIR JOBS AND IMMEDIATELY BEGAN TO PICKET THE PROJECT. THE RESULT OF THIS ACTIVITY ON THEIR PART WAS THAT THE CRANE OPERATOR REFUSED TO CONTINUE TO WORK.

13. ALL OF THE ABOVE CIRCUMSTANCES TAKEN IN THEIR TOTALITY LEAD US TO CONCLUDE THAT PRIOR TO REMOVING THE PICKET LINE FROM THE PROJECT AT 10:00 A.M. ON AUGUST 16, 1972, DOYLE HAD INSTRUCTED THE TWO IRONWORKERS EMPLOYED BY VICTORIA STEEL PRODUCTS LIMITED, WHO HAD RETURNED TO WORK, TO RE-ESTABLISH A PICKET LINE IN THE EVENT THAT THE CRANE OPERATOR, WHOSE SERVICES WERE BEING EMPLOYED BY THE APPLICANT, REPORTED BACK TO THE JOB SITE AND COMMENCED TO OPERATE THE CRANE. IT IS CLEAR FROM THE EVIDENCE THAT THESE INSTRUCTIONS WERE COMPLIED WITH BY THE TWO IRONWORKERS.

14. BY RETURNING TO WORK IN THE MID-MORNING OF AUGUST 16, 1972, IT IS REASONABLE FOR US TO ASSUME THAT THE TWO IRONWORKERS WERE SCHEDULED TO WORK BY VICTORIA STEEL PRODUCTS LIMITED FOR THE REMAINDER OF THE DAY, AND, IN FACT, THE EVIDENCE INDICATES THAT THEY DID SO, EXCEPT FOR THE PERIOD DURING WHICH THEY PICKETED THE PROJECT WHEN THE CRANE OPERATOR RETURNED TO THE JOB THAT DAY. WE ARE FURTHER SATISFIED THAT THEIR CESSATION OF WORK FOR THE PURPOSE OF PICKETING WAS DONE IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING. THIS BEING SO,

WE FIND THAT IN THE EARLY AFTERNOON OF AUGUST 16, 1972, THE TWO IRONWORKERS ENGAGED IN A STRIKE. FURTHER, HAVING REGARD TO THE EVIDENCE THAT THE SAID IRONWORKERS WERE COVERED BY AN EXISTING COLLECTIVE AGREEMENT WHICH IS BINDING UPON VICTORIA STEEL PRODUCTS LIMITED AND THE RESPONDENT UNION, WE FURTHER FIND THAT THE STRIKE WHICH THEY ENGAGED IN ON AUGUST 16, 1972 WAS UNLAWFUL.

15. THE BOARD ACCORDINGLY IS SATISFIED THAT THE PREREQUISITE CONDITIONS TO ITS EXERCISING ITS AUTHORITY UNDER SECTION 123 HAVE BEEN SATISFIED.

16. HAVING REGARD TO ALL THE CIRCUMSTANCES AS REVEALED BY THE EVIDENCE, THE BOARD DEEMS IT ADVISABLE AND HEREBY MAKES THE FOLLOWING DIRECTION:

- (1) THAT PATRICK DOYLE, AND ANY OTHER OFFICER, OFFICIAL OR AGENT OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION No. 700, SHALL REFRAIN FROM CALLING OR AUTHORIZING OR COUNSELLING OR PROCURING OR SUPPORTING OR ENCOURAGING AN UNLAWFUL STRIKE ON THE CANADIAN IMPERIAL BANK OF COMMERCE PROJECT AT WINDSOR.
- (2) THAT PATRICK DOYLE, AND ANY OTHER OFFICER, OFFICIAL OR AGENT OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION No. 700, SHALL REFRAIN FROM INTERFERING IN ANY WAY, INCLUDING THE ESTABLISHMENT OF A PICKET LINE, WITH EMPLOYEES, AGENTS, SUBCONTRACTORS OR SUPPLIERS OF THE APPLICANT OR ANY OTHER PERSONS SEEKING PEACEFUL ENTRANCE TO OR EXIT FROM THE CANADIAN IMPERIAL BANK OF COMMERCE PROJECT AT WINDSOR.

2426-72-U: FREELANCE ERECTORS LIMITED (APPLICANT) v. PATRICK DOYLE AND INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION No. 700 (RESPONDENTS) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL BY AND ON BEHALF OF LOCAL UNIONS 506 AND 625 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: B. W. BINNING, R. WERRY AND MARTIN MERLIN FOR THE APPLICANT; JAMES HARROWER AND J. BROWN FOR THE RESPONDENTS; A. M. MINSKY, OMARIO D'AGOSTINI AND PETER HITCHEN FOR THE INTERVENER.

DECISION OF THE BOARD:

SEPTEMBER 6, 1972.

1. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 123 OF THE LABOUR RELATIONS ACT.
2. THE APPLICANT HAS A SUBCONTRACT FROM CONNELLY TILE AND MARBLE COMPANY LIMITED TO INSTALL ALL OF THE FINISHED PRECAST FACING PANEL FORMS FOR THE OUTSIDE WALLS OF THE MAIN LIBRARY BUILDING CONSTRUCTION PROJECT ON OUELLETTE STREET IN WINDSOR. CONNELLY, IN TURN, HAS A SUBCONTRACT FROM THE GENERAL CONTRACTOR ON THE PROJECT, EASTERN CONSTRUCTION COMPANY LIMITED.
3. MARTIN MERLIN, THE MANAGER OF THE APPLICANT, TESTIFIED THAT ON MONDAY, AUGUST 14, 1972, A PRE-JOB CONFERENCE WAS HELD IN THE OFFICES OF THE WINDSOR CONSTRUCTION ASSOCIATION AT WHICH HE, A REPRESENTATIVE OF THE GENERAL CONTRACTOR AND BUSINESS AGENTS REPRESENTING THE VARIOUS CONSTRUCTION TRADES ON THE PROJECT WERE IN ATTENDANCE. PATRICK DOYLE, THE BUSINESS AGENT FOR THE RESPONDENT TRADE UNION, REQUESTED THAT THE APPLICANT EMPLOY A COMPOSITE CREW COMPOSED OF IRONWORKERS AS WELL AS LABOURERS TO ERECT THE PRECAST FACING PANELS ON THE PROJECT. MERLIN REPLIED THAT THE APPLICANT WAS REQUIRED UNDER ITS COLLECTIVE AGREEMENT WITH THE LABOURERS' UNION TO USE ONLY LABOURERS TO ERECT THE PANELS AND THAT ACCORDINGLY HE WAS NOT ABLE TO COMPLY WITH DOYLE'S REQUEST. DOYLE THEREUPON ADVISED MERLIN THAT UNLESS IRONWORKERS WERE EMPLOYED BY THE APPLICANT HE PLANNED TO SET UP A PICKET LINE ON THE PROJECT WHEN THE APPLICANT COMMENCED THE ERECTION OF THE PANELS.
4. ON WEDNESDAY, AUGUST 16, 1972, THE APPLICANT BEGAN TO ERECT PRECAST PANELS ON THE PROJECT AT 8:00 A.M. USING A CREW COMPOSED OF LABOURERS AND ONE MASON. MERLIN TESTIFIED THAT AT APPROXIMATELY 11:00 A.M. THE SAME DAY DOYLE CAME ON THE SITE AND SPOKE TO SOME IRONWORKERS, ELECTRICIANS AND PLUMBERS WHO, ACCORDING TO MERLIN, WERE EMPLOYED BY OTHER SUBCONTRACTORS ON THE PROJECT. MERLIN, HOWEVER, WAS UNABLE TO IDENTIFY BY NAME THE SUBCONTRACTORS FOR WHOM THE SAID TRADESMEN WERE WORKING. AT ABOUT 11:30, FOUR PICKETS, INCLUDING DOYLE, APPEARED AT THE SITE WITH SIGNS WHICH READ "THIS JOB UNFAIR TO BUILDING TRADES COUNCIL". TWO PICKETS WERE STATIONED AT EACH OF THE TWO ENTRANCES TO THE SITE. MERLIN TESTIFIED THAT HE ENQUIRED OF DOYLE AS TO WHETHER THE PRESENCE OF THE FOUR MEN CONSTITUTED A PICKET LINE. DOYLE ANSWERED IN THE AFFIRMATIVE AND STATED THAT HE WAS THE PICKET LINE CAPTAIN.
5. ACCORDING TO MERLIN, AT 12:00 ALL OF THE TRADESMEN WORKING ON THE PROJECT LEFT THE SITE FOR THEIR LUNCH BREAK. MERLIN TESTIFIED THAT THE CARPENTERS AND LABOURERS RETURNED TO WORK AFTER THE BREAK AT 12:30, BUT THAT THE IRONWORKERS AND PLUMBERS DID NOT RETURN TO THE SITE. ACCORDING TO MERLIN, THE ELECTRICIANS RETURNED TO THE JOB BUT LEFT AGAIN AT 2:00 P.M. MERLIN FURTHER TESTIFIED THAT A NUMBER OF RODMEN IN THE EMPLOY OF J. HARRIS & SON LIMITED WERE SCHEDULED TO REPORT FOR WORK AT NOON ON AUGUST 16TH AND THAT THE RODMEN, IN FACT, DID REPORT TO THE SITE BUT REFUSED TO CROSS THE PICKET LINE.

6. MERLIN'S EVIDENCE IS THAT THE PICKET LINE WAS MAINTAINED ON THE PROJECT EVERY WORKING DAY FROM AUGUST 16TH TO AUGUST 24TH. MERLIN TESTIFIED THAT DURING THAT PERIOD NONE OF THE PLUMBERS, ELECTRICIANS AND IRONWORKERS, WHO PRIOR TO AUGUST 16TH HAD BEEN WORKING ON THE SITE, CROSSED THE PICKET LINE. ALSO, ACCORDING TO MERLIN, THE RODMEN IN THE EMPLOY OF J. HARRIS & SON LIMITED DURING ALL OF THIS PERIOD DID NOT CROSS THE PICKET LINE. FURTHER, MERLIN'S EVIDENCE IS THAT ON MONDAY, AUGUST 21, 1972, THE OWNER OF THE CRANE BEING USED TO LIFT THE APPLICANT'S PANELS REFUSED TO SEND THE CRANE BACK ON TO THE SITE. AS A RESULT OF THE LATTER ACTION, THE APPLICANT WAS FORCED TO DISCONTINUE ITS ERECTION WORK, ALTHOUGH IT WAS ABLE TO UTILIZE ITS CREW OF LABOURERS ON OTHER WORK FOR THE NEXT COUPLE OF DAYS.

7. ON AUGUST 23, 1972, ANOTHER MEETING WAS HELD AT THE OFFICES OF THE WINDSOR BUILDING TRADES COUNCIL AT WHICH MERLIN, A REPRESENTATIVE OF THE GENERAL CONTRACTOR AND THE BUSINESS AGENTS OF THE VARIOUS CONSTRUCTION TRADES ON THE PROJECT WERE IN ATTENDANCE. ACCORDING TO MERLIN, DOYLE MAINTAINED THE SAME POSITION AS HE HAD AT THE AUGUST 14TH MEETING, NAMELY THAT THE APPLICANT WAS OBLIGED TO EMPLOY IRONWORKERS ON ITS CREWS ERECTING THE PRECAST PANELS AND HE REFUSED TO AGREE TO COMPLY WITH A SUGGESTION BY MERLIN THAT DOYLE REMOVED THE PICKET LINE UNTIL THE HEARING OF THE INSTANT APPLICATION. MERLIN TESTIFIED THAT THE REPRESENTATIVES OF THE ELECTRICIANS AND PLUMBERS INDICATED AT THE MEETING THAT EVEN IF THIS BOARD'S DECISION ON THE PRESENT APPLICATION WORKED TO THE DISADVANTAGE OF THE IRONWORKERS, THE MEMBERS OF THE TRADES WOULD NOT RETURN TO THE PROJECT.

8. ON AUGUST 24, 1972, MERLIN MET WITH JACK STEARS, A REPRESENTATIVE OF THE GENERAL CONTRACTOR. STEARS PREVAILED UPON MERLIN TO AGREE TO USE IRONWORKERS HIRED BY EASTERN CONSTRUCTION COMPANY LIMITED ON ITS CREW ERECTING THE PRECAST PANELS. ACCORDINGLY, FROM AUGUST 24TH UNTIL THE DATE OF THE BOARD HEARING ON AUGUST 29, 1972, THE APPLICANT HAS BEEN USING A COMPOSITE CREW OF LABOURERS AND IRONWORKERS AND ONE MASON TO DO THE PANEL ERECTION WORK UNDER ITS CONTRACT. ON AUGUST 24TH, THE PICKET LINE WAS REMOVED FROM THE PROJECT AND THE ELECTRICIANS, PLUMBERS AND IRONWORKERS EMPLOYED BY OTHER SUBCONTRACTORS ON THE PROJECT.

9. JAMES HARROWER, WHO APPEARED AT THE BOARD HEARING ON BEHALF OF THE RESPONDENTS, IDENTIFIED A COLLECTIVE AGREEMENT FILED IN EVIDENCE BETWEEN THE SARNIA AND WINDSOR CONSTRUCTION ASSOCIATIONS AND THE RESPONDENT TRADE UNION. THE DURATION CLAUSE OF THE SAID AGREEMENT PROVIDES THAT IT IS TO REMAIN IN EFFECT FROM MAY 1, 1971 TO APRIL 30, 1973. HARROWER TESTIFIED THAT THE COLLECTIVE AGREEMENT WAS BINDING ON J. HARRIS & SON LIMITED AND COVERED THE IRONWORKERS IN ITS EMPLOY.

10. SECTION 123 OF THE ACT READS:

WHERE ON THE COMPLAINT OF AN INTERESTED PERSON, TRADE UNION, COUNCIL OF TRADE UNIONS OR EMPLOYERS' ORGANIZATION THE BOARD IS SATIS-

FIED THAT A TRADE UNION OR COUNCIL OF TRADE UNIONS CALLED OR AUTHORIZED OR THREATENED TO CALL OR AUTHORIZE AN UNLAWFUL STRIKE OR THAT AN OFFICER, OFFICIAL OR AGENT OF A TRADE UNION OR COUNCIL OF TRADE UNIONS COUNSELLED OR PROCURED OR SUPPORTED OR ENCOURAGED AN UNLAWFUL STRIKE OR THREATENED AN UNLAWFUL STRIKE, OR THAT EMPLOYEES ENGAGED IN OR THREATENED TO ENGAGE IN AN UNLAWFUL STRIKE, IT MAY DIRECT WHAT ACTION IF ANY A PERSON, EMPLOYEE, EMPLOYER, EMPLOYERS' ORGANIZATION, TRADE UNION OR COUNCIL OF TRADE UNIONS AND THEIR OFFICERS, OFFICIALS OR AGENTS SHALL DO OR REFRAIN FROM DOING WITH RESPECT TO THE UNLAWFUL STRIKE OR THE THREAT OF AN UNLAWFUL STRIKE.

11. WE ARE SATISFIED ON THE BASIS OF THE EVIDENCE OF MERLIN THAT PATRICK DOYLE, A BUSINESS AGENT FOR THE RESPONDENT UNION, ESTABLISHED AND MAINTAINED A PICKET LINE ON THE MAIN LIBRARY BUILDING PROJECT ON OUELLETTE STREET IN WINDSOR FROM AUGUST 16 TO AUGUST 24, 1972. IN ACCORDANCE WITH THE PROVISIONS OF SECTION 88(2), THE ACTION TAKEN BY DOYLE, WHO IS AN OFFICIAL OF THE RESPONDENT TRADE UNION, IS DEEMED TO BE THE ACTION OF THE TRADE UNION ITSELF. IN OTHER WORDS, THE RESPONDENT TRADE UNION AS WELL AS DOYLE WAS RESPONSIBLE FOR THE ABOVE REFERRED TO PICKET LINE.

12. MERLIN TESTIFIED THAT IRONWORKERS, PLUMBERS AND ELECTRICIANS WORKING ON THE PROJECT WALKED OFF THE JOB SITE WHEN THE PICKET LINE WAS SET UP ON AUGUST 16TH AND DID NOT RETURN TO WORK UNTIL IT WAS REMOVED ON AUGUST 24TH. WE HAVE NO EVIDENCE, HOWEVER, AS TO WHO ARE THE EMPLOYERS OF THE SAID TRADESMEN. FURTHER, EVEN ASSUMING THAT THE SAID TRADESMEN WERE SCHEDULED TO WORK DURING THE PERIOD THAT THE PROJECT WAS PICKETED, WE HAVE SOME RESERVATION AS TO WHETHER IT CAN BE SAID ON THE BASIS OF THE EVIDENCE BEFORE US THAT THEY ENGAGED IN A STRIKE, I.E., THAT THEY ACTED IN COMBINATION OR IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING. EVEN ASSUMING THAT THE SAID TRADESMEN DID ENGAGE IN A STRIKE, THERE IS NO EVIDENCE BEFORE US UPON WHICH TO BASE A FINDING THAT SUCH A STRIKE WAS UNLAWFUL.

13. THE EVIDENCE ADDUCED WITH RESPECT TO THE ACTIVITIES OF RODMEN IN THE EMPLOY OF J. HARRIS & SONS LIMITED ON AND AFTER AUGUST 16, 1972 IS HARDLY MORE SATISFACTORY. THERE IS NO EVIDENCE AS TO HOW MANY RODMEN WERE SCHEDULED BY J. HARRIS & SON LIMITED TO WORK ON AUGUST 16TH. ALSO THE BASIS OF MERLIN'S KNOWLEDGE AS TO THE WORK SCHEDULE OF J. HARRIS & SON LIMITED FOR ITS EMPLOYEES ON THAT DAY WAS NOT DISCLOSED IN HIS TESTIMONY. FURTHER, THERE IS NO EVIDENCE AS TO HOW MANY, IF ANY, EMPLOYEES OF J. HARRIS & SON LIMITED WERE SCHEDULED TO WORK BETWEEN AUGUST 16 AND AUGUST 24, 1972. COUNSEL FOR THE APPLICANT CALLED JAMES HARROWER, WHO APPEARED AT THE HEARING ON BEHALF OF THE RESPONDENTS, AS A WITNESS TO IDENTIFY THE COLLECTIVE AGREEMENT OF THE RESPONDENT

UNION WHICH HE TESTIFIED WAS BINDING ON J. HARRIS & SON LIMITED. NO EVIDENCE WAS ADDUCED, HOWEVER, AS TO HARROWER'S POSITION IN OR RELATIONSHIP WITH THE RESPONDENT UNION OR THE BASIS OF HIS KNOWLEDGE THAT J. HARRIS & SON LIMITED WAS BOUND BY THE SAID AGREEMENT.

14. FOR THE FOREGOING REASONS, WE ARE NOT PREPARED TO MAKE A FINDING THAT FROM AUGUST 16 TO AUGUST 24, 1972 ALL OR SOME OF THE RODMEN EMPLOYED BY J. HARRIS & SON LIMITED ENGAGED IN A STRIKE AS DEFINED IN SECTION 1(1)(M) OF THE ACT. FURTHER, EVEN ASSUMING THAT THE SAID RODMEN DID ENGAGED IN A STRIKE DURING THE ABOVE PERIOD, BY REASON OF THEIR REFUSAL TO CROSS THE PICKET LINE ESTABLISHED BY DOYLE AND THE RESPONDENT TRADE UNION, WE ARE NOT PREPARED TO MAKE A FINDING THAT THE STRIKE WAS UNLAWFUL.

15. ACCORDINGLY, ON THE BASIS OF THE EVIDENCE ADDUCED AT THE BOARD HEARING, THE APPLICANT HAS FAILED TO SATISFY US THAT THE RESPONDENT TRADE UNION CALLED OR AUTHORIZED OR THREATENED TO CALL OR AUTHORIZE AN UNLAWFUL STRIKE OR THAT PATRICK DOYLE, A BUSINESS AGENT OF THE RESPONDENT UNION, COUNSELLED OR PROCURED OR SUPPORTED OR ENCOURAGED AN UNLAWFUL STRIKE. IN THESE CIRCUMSTANCES, THE BOARD IS NOT PREPARED TO GRANT THE RELIEF SOUGHT BY THE APPLICANT IN THE INSTANT APPLICATION.

16. THE APPLICATION ACCORDINGLY IS DISMISSED.

2369-72-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 120 (APPLICANT) v. FREEMAN ELECTRIC LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: H. LORNE MORPHY AND B. E. DU MARESQ FOR THE APPLICANT; PAUL DOWNS FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 7, 1972.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE PROSECUTION AGAINST THE RESPONDENT FOR CERTAIN OFFENCES ALLEGED TO HAVE BEEN COMMITTED. THE APPLICATION WAS MADE ON AUGUST 2, 1972 AND CAME ON FOR HEARING IN THE USUAL COURSE ON WEDNESDAY, AUGUST 30, 1972.

2. THE APPLICANT STATED IN ITEM 3 OF THE APPLICATION THAT THE DATE OF COMMENCEMENT OF THE ALLEGED OFFENCES WAS "ON OR ABOUT FEBRUARY 20TH, 1972".

3. THE MATERIAL FACTS RELIED ON BY THE APPLICANT AS SET OUT IN THE APPLICATION ALLEGE, WITH ONE EXCEPTION, THAT ALL THE ACTS OF THE RESPONDENT WHICH CONSTITUTE THE ALLEGED OFFENCE TOOK PLACE "PRIOR TO" OR "SHORTLY BEFORE" MARCH 3, 1972. THE ONLY EXCEPTION WAS AN ALLEGATION

THAT CERTAIN ACTS COMPLAINED OF TOOK PLACE ON MARCH 3, 1972, THE DATE A REPRESENTATION VOTE WAS TAKEN AMONG EMPLOYEES OF THE RESPONDENT.

4. THE APPLICANT FILED ADDITIONAL MATERIAL FACTS BY LETTER DATED AUGUST 29, 1972 AND THE BOARD WAS NOT ABLE TO BRING THESE ALLEGATIONS TO THE ATTENTION OF THE RESPONDENT UNTIL THE HEARING ON AUGUST 30, 1972.

5. THE RESPONDENT OBJECTED TO THE LATE FILING OF THE ADDITIONAL MATERIAL FACTS WHICH WERE FILED ON AUGUST 29, 1972 AND FURTHER ARGUED THAT THE APPLICANT HAD FAILED TO PROVIDE SUFFICIENT PARTICULARS OF ITS ALLEGATIONS AS REQUIRED BY SECTION 47(1) OF THE BOARD'S RULES OF PROCEDURE AND ACCORDINGLY SHOULD NOT BE PERMITTED TO ADDUCE EVIDENCE WITH RESPECT TO SUCH ALLEGATIONS PURSUANT TO THE PROVISIONS OF SECTION 47(2) OF THE RULES.

6. NO REQUEST FOR ADDITIONAL PARTICULARS WAS MADE BY THE RESPONDENT PRIOR TO THE HEARING IN THIS MATTER.

7. THE APPLICANT ARGUED THAT THE PROVISIONS OF SECTION 47 OF THE BOARD'S RULES OF PROCEDURE DID NOT APPLY TO APPLICATIONS FOR CONSENT TO INSTITUTE PROSECUTION AND ACCORDINGLY THE APPLICANT TOOK THE POSITION THAT IT WAS NOT BOUND BY ANY LIMITATIONS CONTAINED IN SECTION 47 OF THE RULES.

8. THE BOARD RULED THAT, WITH THE POSSIBLE EXCEPTION OF THE ALLEGATION RELATING TO THE INCIDENT THAT IS ALLEGED TO HAVE OCCURRED ON MARCH 3, 1972, THE ALLEGATIONS CONTAINED IN THE APPLICATION DID NOT CONTAIN THE MATERIAL FACTS REQUIRED BY SECTION 47(1) OF THE RULES AND THAT THE ADDITIONAL MATERIAL FACTS ALLEGED ON AUGUST 29TH WERE NOT MADE PROMPTLY BY THE APPLICANT AND FAILED TO MEET THE REQUIREMENTS OF SECTION 47(1) OF THE RULES. THE BOARD FURTHER FOUND THAT SECTION 47 OF THE BOARD'S RULES OF PROCEDURE APPLIED TO EVERY APPLICATION TO THE BOARD INCLUDING AN APPLICATION FOR CONSENT TO INSTITUTE PROSECUTION (SEE ELLIS DON LIMITED, OLRB MONTHLY REPORT, AUGUST 1970, P. 587).

9. WHERE A REQUEST FOR FURTHER PARTICULARS IS MADE PRIOR TO THE HEARING PURSUANT TO THE PROVISIONS OF SECTION 47(3) OF THE BOARD'S RULES, AND THE PARTY MAKING THE ALLEGATIONS FAILS TO COMPLY WITH THE PROVISIONS OF SECTION 47(1), NO FURTHER OPPORTUNITY WILL USUALLY BE GIVEN TO SUCH PARTY TO PROVIDE FURTHER PARTICULARS.

10. WHERE, HOWEVER, ALLEGATIONS ARE DEFICIENT IN PARTICULARITY AND NO REQUEST FOR FURTHER PARTICULARS HAS BEEN MADE PRIOR TO A HEARING, IN ORDER TO GIVE EFFECT TO THE PROVISIONS OF SECTION 47(1) AS WELL AS TO THE PROVISIONS OF SECTION 47(3) OF THE BOARD'S RULES, IT IS THE BOARD'S USUAL PRACTICE TO GRANT AN ADJOURNMENT IN ORDER TO GIVE TO THE PARTY MAKING THE ALLEGATIONS AN OPPORTUNITY TO COMPLY WITH THE PROVISIONS OF SECTION 47(1) OF THE RULES.

11. EACH PARTY BEARS THE RESPONSIBILITY TO ACT PROMPTLY IN ORDER TO AVOID DELAY AND IF THE PROVISIONS OF SECTION 47 ARE NOT COMPLIED WITH, THE PARTY FAILING TO COMPLY MUST ACCEPT THE RESPONSIBILITY FOR ANY DELAY WHICH MAY OCCUR.

12. IN THE INSTANT CASE BOTH PARTIES FAILED TO COMPLY WITH THE REQUIREMENTS OF SECTION 47 PRIOR TO THE HEARING IN THIS MATTER. THE APPLICANT FAILED TO COMPLY WITH THE REQUIREMENTS OF SECTION 47(1) AND THE RESPONDENT FAILED TO DEMAND ADDITIONAL PARTICULARS PROMPTLY AS REQUIRED BY SECTION 47(3). HOWEVER THAT MAY BE, THE RESPONDENT'S FAILURE DOES NOT RELIEVE THE APPLICANT OF ITS RESPONSIBILITY TO COMPLY WITH THE PROVISIONS OF SECTION 47(1). JUST AS THE APPLICANT SHOULD IN THESE CIRCUMSTANCES BE PERMITTED AN OPPORTUNITY TO PROVIDE ADDITIONAL PARTICULARS IN ORDER TO COMPLY WITH SECTION 47(1), THE RESPONDENT SHOULD BE GIVEN AN ADJOURNMENT IN ORDER TO PREPARE ITSELF TO MEET THE ADDITIONAL PARTICULARS.

13. HOWEVER, QUITE APART FROM THE PROBLEM WITH RESPECT TO THE DEFICIENCY IN PARTICULARLY OF THE APPLICANT'S ALLEGATIONS, AND EVEN IF THE APPLICANT WERE TO ABANDON ALL ITS ALLEGATIONS EXCEPT THAT WHICH RELATES TO THE ALLEGED OFFENCE WHICH TOOK PLACE ON MARCH 3, 1972, IN VIEW OF THE SIX MONTH LIMITATION PERIOD WHICH APPLIES TO APPLICATIONS FOR CONSENT TO INSTITUTE PROSECUTION WITH RESPECT TO ALL OFFENCES UNDER THE LABOUR RELATIONS ACT (SEE A. M. WOOLFREY OSHAWA, ET AL., OLRB MONTHLY REPORT, JUNE 1968, P. 294), NO PURPOSE WOULD BE SERVED BY PROCEEDING WITH THIS APPLICATION. EVEN ASSUMING THAT THE PARTIES WOULD BE ABLE TO COMPLETE THE EVIDENCE AND THEIR ARGUMENT ON AUGUST 30TH (AND THERE IS CONSIDERABLE DOUBT WITH RESPECT TO THAT ASSUMPTION), IT WOULD BE PRACTICALLY IMPOSSIBLE FOR THE BOARD TO COMPLETE ITS DELIBERATIONS ON THE ISSUE BEFORE IT, ARRIVE AT ITS DECISION AND CAUSE ITS WRITTEN DECISION TO BE SERVED ON BOTH PARTIES IN ORDER TO PERMIT THE APPLICANT TO PREPARE THE FORMAL CONSENT WHICH WOULD HAVE TO BE SIGNED BY THE BOARD IN ORDER THAT AN INFORMATION COULD BE LAID BEFORE THE PROVINCIAL COURT WITHIN THE SIX MONTH LIMITATION PERIOD REFERRED TO ABOVE.

14. THE APPLICANT'S DELAY IN BRINGING THESE PROCEEDINGS HAS FRUSTRATED THE PURPOSE AND INTENT OF SECTION 47(2) OF THE BOARD'S RULES OF PROCEDURE AND HAS EFFECTIVELY PREVENTED THE BOARD FROM GIVING PROPER CONSIDERATION TO THE ISSUES BEFORE IT WITHIN THE SIX MONTH LIMITATION PERIOD REFERRED TO ABOVE (SEE PART XXIV, SECTION 693, SUBSECTION 2 OF THE CRIMINAL CODE). A PARTY CANNOT SLEEP ON ITS RIGHTS AS THE APPLICANT HAS DONE IN THIS MATTER AND EXPECT THE BOARD TO BAIL IT OUT OF ITS DIFFICULTIES BY ADOPTING EXTRAORDINARY PROCEDURES IN ORDER TO MEET TIME LIMITATIONS WHICH HAVE BEEN DRASTICALLY ABBREVIATED BY THE APPLICANT'S PROCRASTINATIONS.

15. ALTHOUGH THE REQUIREMENT THAT A PARTY ACT PROMPTLY IN ACCORDANCE WITH THE PROVISIONS OF SECTION 47(2) OF THE BOARD'S RULES OF PROCEDURE IS NOT USUALLY AS RESTRICTIVE WITH RESPECT TO ALLEGATIONS CON-

TAINED IN AN APPLICATION FOR CONSENT TO INSTITUTE PROSECUTION AS THE REQUIREMENT IS WITH RESPECT TO ALLEGATIONS MADE DURING THE COURSE OF OTHER TYPES OF APPLICATIONS, THE REQUIREMENT FOR PROMPT ACTION STILL REMAINS AND MOST CERTAINLY APPLIES WITH RESPECT TO ADDITIONAL ALLEGATIONS THAT ARE MADE BY THE APPLICANT AFTER THE APPLICATION HAS BEEN MADE AND SERVED ON THE RESPONDENT. THE REQUIREMENT THAT THE APPLICANT FOR CONSENT TO INSTITUTE PROSECUTION ACT PROMPTLY IS NOT MERELY FOR THE BENEFIT OF THE RESPONDENT BUT IS ALSO INTENDED TO PERMIT THE BOARD TO COMPLETE THE HEARING AND ITS DELIBERATIONS IN ORDER THAT ITS DECISION MAY BE ISSUED IN TIME TO PERMIT THE APPLICANT TO TAKE THE NECESSARY STEPS TO LAY A TIMELY INFORMATION BASED ON THE BOARD'S DECISION IF CONSENT IS GRANTED. THE APPLICANT'S DELAY IN THIS MATTER HAS FRUSTRATED THIS INTENT AND ACCORDINGLY NO PURPOSE WOULD BE SERVED HAD THE BOARD PROCEEDED WITH THE EVIDENCE IN THIS MATTER. THE BOARD ACCORDINGLY, IN THE EXERCISE OF ITS DISCRETION AND IN ORDER TO GIVE EFFECT TO THE PURPOSE AND INTENT OF SECTIONS 85 AND 90 OF THE ACT AND SECTION 47 OF THE BOARD'S RULES OF PROCEDURE, RULED AT THE HEARING THAT EVEN IF ITS CONSENT TO INSTITUTE PROSECUTION WERE TO BE GIVEN IN THE CIRCUMSTANCES OF THIS CASE SUCH CONSENT COULD ONLY BE ISSUED AFTER THE SIX MONTH LIMITATION PERIOD HAD EXPIRED AND THE BOARD ACCORDINGLY REFUSED TO PROCEED TO HEAR THE EVIDENCE ON THE MERITS OF THIS CASE. THE PROCEED IN THE CIRCUMSTANCES DESCRIBED ABOVE WOULD BE AN EXERCISE IN FUTILITY AND MIGHT EVEN BY CONSTRUED AS AN ACT OF HARASSMENT AGAINST THE RESPONDENT.

16. FOR THE ABOVE REASONS AND FOR THE REASONS GIVEN IN THE A. M. WOOLFREY OSHAWA CASE, SUPRA, THE APPLICATION IN THIS MATTER IS ACCORDINGLY TERMINATED.

2222-72-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT)
V. JAMESWAY CO. LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: EDWARD C. WITTHAMES FOR THE APPLICANT; B.H. STEWART AND C. RAMSAUER FOR THE RESPONDENT.

DECISION OF O.B. SHIME VICE-CHAIRMAN AND BOARD MEMBER P.J. O'KEEFFE: SEPTEMBER 7, 1972.

1. THE NAME "JAMESWAY Co. LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "JAMESWAY Co. LIMITED".

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT

AT PRESTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES, SERVICE AND OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. FOR THE PURPOSE OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT OFFICE STAFF INCLUDES PLANT CLERICAL AND TECHNICAL STAFF.

5. AT THE HEARING ON JULY 27, 1972, THE BOARD ADVISED THE PARTIES THAT A SUBSTANTIAL NUMBER OF THE APPLICATION AND RECEIPTS FILED AS MEMBERSHIP EVIDENCE SHOWED NO YEAR ALTHOUGH THERE WERE NO DEFICIENCIES IN ANY OTHER RESPECT. THE CARDS WERE DATED JULY 4TH AND THE APPLICATION FOR CERTIFICATION WAS MADE ON JULY 5, 1972. MR. WITTHAMES, THE REPRESENTATIVE OF THE TRADE UNION, STATED THAT HE HAD PERSONAL KNOWLEDGE OF THE ORGANIZING CAMPAIGN AND ADVISED THE BOARD THAT THE CARDS DATED JULY 4TH WERE SIGNED ON JULY 4, 1972.

6. A QUESTION AROSE AS TO THE PROCEDURE THAT THE BOARD FOLLOWS IN MATTERS OF THIS SORT AND ACCORDINGLY THE BOARD HEARD VIVA VOCE EVIDENCE FROM MR. WITTHAMES SUBJECT TO THE OBJECTION OF COUNSEL FOR THE RESPONDENT. THE BOARD RESERVED DECISION ON THE MOTION OF COUNSEL FOR THE RESPONDENT AND ADVISED THE PARTIES THAT IT WOULD INDICATE IN A WRITTEN DECISION THE PRACTICE THAT THE BOARD FOLLOWED WHERE THE YEAR WAS OMITTED FROM THE MEMBERSHIP EVIDENCE.

7. MR. WITTHAMES TESTIFIED THAT HE PERSONALLY HAD OBTAINED THE SIGNATURES ON THE MEMBERSHIP CARDS ON JULY 4, 1972. HE WAS VERY PRECISE AS TO THE TIME, PLACE AND MANNER IN WHICH HE OBTAINED THE SIGNATURES AND THERE IS NO DOUBT THAT THE CARDS WERE SIGNED AS HE INDICATED. THE BOARD'S PRACTICE IN THIS TYPE OF CASE IS ALLUDED TO IN RETAIL CLERKS INTERNATIONAL ASSOCIATION V. J.W. CROOKS COMPANY, LIMITED CARRYING ON BUSINESS IN THE NAME OF CROOKS REXALL PHARMACY AND TARGET DISCOUNT PHARMACY INC. CARRYING ON BUSINESS IN THE NAME OF TARGET DISCOUNT PHARMACY V. GROUP OF EMPLOYEES [1972] OLRB REP. 126 WHERE THE BOARD STATED:

"...TWO OF THE SAID COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPT FORMS BEAR THE DAY AND MONTH ON WHICH THE APPLICATIONS WERE SIGNED BUT NO YEAR IS SHOWN. ONE COMBINATION APPLICATION AND RECEIPT FORM BEARS NO DATE WHATSOEVER. THE REPRESENTATIVE OF THE APPLICANT AT THE HEARING HAD NO PERSONAL KNOWLEDGE AS TO THE PERIOD DURING WHICH THE ORGANIZING CAMPAIGN OF THE APPLICANT TOOK PLACE AMONG THE EMPLOYEES OF THE RESPONDENT."

THE PRACTICE APPEARS TO BE THAT WHERE NO YEAR IS SHOWN THE REPRESENTATIVE OF THE APPLICANT IS QUESTIONED AS TO WHEN THE ORGANIZING CAMPAIGN TOOK PLACE, AND IF IT COULD REASONABLY BE ASCERTAINED THAT THE MEMBER-

SHIP EVIDENCE WAS SIGNED WITHIN SIX MONTHS PRIOR TO THE DATE OF THE APPLICATION THE BOARD WILL USUALLY ACCEPT THE MEMBERSHIP EVIDENCE. IN THE J.W. CROOKS COMPANY, LIMITED CASE, SUPRA, THE BOARD COULD NOT ASCERTAIN THE YEAR WITH REASONABLE CERTAINTY AND REJECTED THE MEMBERSHIP EVIDENCE. HOWEVER, IN THIS CASE WE ARE SATISFIED THAT THE MEMBERSHIP EVIDENCE WAS OBTAINED AS STATED BY MR. WITTHAMES ON JULY 4, 1972, WHICH WAS THE DAY PRIOR TO THE APPLICATION FOR CERTIFICATION HAVING BEEN MADE.

8. NOTWITHSTANDING THE PRACTICE FOLLOWED IN CASES OF THIS SORT RULE 48(2) OF THE RULES OF PROCEDURE PERMITS THE BOARD TO ACCEPT ORAL EVIDENCE OF MEMBERSHIP IN A TRADE UNION TO "IDENTIFY AND SUBSTANTIATE THE WRITTEN EVIDENCE". THE BOARD HAS IN THE PAST ACCEPTED ORAL EVIDENCE WHERE NO YEAR HAS BEEN SHOWN BOTH IN SITUATIONS WHERE THE TRADE UNION MEMBERSHIP EVIDENCE IS DEFICIENT WITH RESPECT TO THE YEAR, AND IN THE CASE WHERE EMPLOYEE OBJECTORS HAVE FILED PETITIONS WITHOUT THE YEAR BEING SHOWN. ACCORDINGLY, WE ACCEPT THE ORAL EVIDENCE GIVEN BY MR. WITTHAMES AS TO SUBSTANTIATE THE MEMBERSHIP EVIDENCE WITH RESPECT TO THE YEAR PURSUANT TO RULE 48(2) OF THE RULES OF PROCEDURE.

9. WE EXCEPT FROM OUR COMMENTS IN THIS CASE CASES IN THE CONSTRUCTION INDUSTRY WHERE THERE IS NO HEARING AND WHERE THERE IS NO OPPORTUNITY FOR THE BOARD TO QUESTION THE REPRESENTATIVE OF THE APPLICANT TRADE UNION IN ORDER TO ASCERTAIN WHEN THE ORGANIZING CAMPAIGN TOOK PLACE TO AS TO ASCERTAIN WHEN THE MEMBERSHIP EVIDENCE WAS SIGNED. IN THOSE CASES AS WELL SINCE THERE IS NO HEARING RULE 48(2) HAS NO APPLICATION BECAUSE THERE COULD BE NO EVIDENCE ADDUCED.

10. FOR THE REASONS GIVEN THE BOARD ACCEPTS THE EVIDENCE FILED BY THE APPLICANT AS EVIDENCE OF MEMBERSHIP.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 13, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: SEPTEMBER 7, 1972.

1. I DISSENT.

2. RULE 48(2) OF THE RULES OF PROCEDURE PROVIDES THAT NO ORAL EVIDENCE OF MEMBERSHIP IN A TRADE UNION SHALL BE ACCEPTED BY THE BOARD "EXCEPT TO IDENTIFY AND SUBSTANTIATE THE WRITTEN EVIDENCE".

3. THE PORTION OF THE MEMBERSHIP EVIDENCE LACKING IN THIS CASE IS THE YEAR IN THE MEMBERSHIP EVIDENCE FILED. I HAVE DIFFICULTY IN ALLOWING ORAL EVIDENCE TO BE CALLED TO EITHER "IDENTIFY OR SUBSTANTIATE" THAT PORTION OF THE EVIDENCE WHICH IS NON EXISTENT.

4. IN MY OPINION IT IS INSERTING NEW EVIDENCE RATHER THAN EITHER IDENTIFYING OR SUBSTANTIATING.

5. ACCORDINGLY I WOULD NOT ALLOW SUCH ORAL EVIDENCE TO BE CALLED AND ACCORDINGLY ON THE BASIS OF THE EVIDENCE FILED BY THE APPLICANT, WOULD DISMISS THE APPLICATION.

1475-71-U: DONALD G. GEBBIE AND J. MICHAEL LONGMOORE (COMPLAINANTS)
V. UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA, LOCAL 200; FORD MOTOR COMPANY OF CANADA, LIMITED (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: F.W. PARK AND J.M. LONGMOORE FOR THE COMPLAINANTS; L.A. MACLEAN, JACK TAYLOR AND S. HARRIS FOR UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 200; DONALD J.M. BROWN, JOHN H. BAILEY AND GEORGE A. PECKHAM FOR FORD MOTOR COMPANY OF CANADA, LIMITED.

DECISION OF THE BOARD:

SEPTEMBER 8, 1972.

1. THE NAME "THE FORD MOTOR COMPANY OF CANADA LIMITED AND LOCAL 200 U.A.W." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENTS IS AMENDED TO READ: "UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 200; FORD MOTOR COMPANY OF CANADA, LIMITED".

2. THE COMPLAINANTS IN THIS CASE HAVE ALLEGED THAT THE RESPONDENTS, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 200 (HEREINAFTER REFERRED TO AS "UAW") AND FORD MOTOR COMPANY OF CANADA, LIMITED (HEREINAFTER REFERRED TO AS "FORD"), HAVE DEALT WITH THEM CONTRARY TO THE PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT IN FORCE BETWEEN FORD AND THE UAW AND CONTRARY TO SECTIONS 37, 58(A) AND 60 OF THE LABOUR RELATIONS ACT, AND REQUEST THAT THEY BE REINSTATED TO THEIR EMPLOYMENT AS OF JUNE 30, 1971.

3. AT THE OUTSET OF THE HEARING BOTH COUNSEL FOR FORD AND COUNSEL FOR THE UAW SOUGHT TO MAKE CERTAIN PRELIMINARY OBJECTIONS. COUNSEL FOR THE COMPLAINANTS SUBMITTED, HOWEVER, THAT THE BOARD COULD NOT ENTERTAIN THE PRELIMINARY OBJECTIONS BECAUSE OF AN EARLIER DECISION BY A SCREENING PANEL OF THIS BOARD, AND INSISTED THAT THE BOARD PROCEED TO HEAR THE EVIDENCE AND NOT ENTERTAIN THE PRELIMINARY OBJECTIONS.

4. THE STATUTORY AUTHORITY FOR THE BOARD'S PROCEDURE IN THIS CASE IS CONTAINED IN SECTION 79 OF THE LABOUR RELATIONS ACT WHICH PRESCRIBES A NUMBER OF WAYS IN WHICH THE BOARD MAY DISPOSE OF AN APPLICATION UNDER SECTION 79. IN THIS MATTER THE BOARD APPOINTED A FIELD OFFICER TO INQUIRE INTO THE COMPLAINT AND SUBSEQUENTLY A SCREENING PANEL OF THE BOARD, IN THE EXERCISE OF ITS DISCRETION DECIDED THAT THE BOARD SHOULD INQUIRE INTO THE COMPLAINT.

5. THE SECTION 79 PROCEDURE IS AUGMENTED BY RULES 28 TO 31 OF THE BOARD'S RULES OF PROCEDURE AND AN EXPLANATION OF THE PROCEDURE IS CONTAINED IN THE PRACTICE NOTES ISSUED BY THE BOARD AND APPENDED TO THE RULES OF PRACTICE. THE PRACTICE OF THE BOARD IN EXERCISING ITS DISCRETION PURSUANT TO SECTION 79(4) IS TO HAVE A SCREENING PANEL OF THE BOARD CONSIDER A REPORT OF THE FIELD OFFICER AND THEN DECIDE WHETHER OR NOT IT SHOULD SEND THE MATTER ON FOR AN INQUIRY. THE SCREENING PANEL FUNCTIONS AS A SAFETY STEP BETWEEN THE FIELD OFFICER AND THE PANEL OF THE BOARD MAKING THE INQUIRY SO AS TO ALLOW THE INQUIRY PANEL TO CONDUCT THE HEARING DE NOVO WITHOUT BEING PREJUDICED BY MATTERS THAT MIGHT HAVE BEEN DISCUSSED WITH THE PARTIES BEFORE THE FIELD OFFICER AND CONSIDERED BY THE SCREENING PANEL. IT ALSO PERMITS THE PARTIES TO MAKE FULL DISCLOSURE TO A FIELD OFFICER WITHOUT FEAR THAT STATEMENTS WILL BE USED AGAINST THEM TO THEIR PREJUDICE BEFORE THE INQUIRY PANEL. THE SCREENING PANEL IS THUS A BUFFER BETWEEN THE FIELD OFFICER AND THE INQUIRY PANEL AND IT SERVES MERELY TO DECIDE WHAT ROUTE THE COMPLAINT SHOULD FOLLOW AFTER THE FIELD OFFICER HAS COMPLETED HIS INQUIRY. IN PRACTICE, THE BOARD USUALLY APPOINTS A FIELD OFFICER AND HAS RARELY, IF EVER, DISMISSED A COMPLAINT UNDER SECTION 79(4) WITHOUT FIRST APPOINTING A FIELD OFFICER. THE SCREENING PANEL THUS DETERMINES, (A) IF THERE IS TO BE A FURTHER INQUIRY, AND (B) WHETHER THE INQUIRY IS TO BE BY A PANEL OF THE BOARD OR BY A HEARING OFFICER. THE SCREENING PANEL EXERCISES NO APPELATE FUNCTION OVER THE INQUIRY PANEL OR THE HEARING OFFICER.

6. IN THIS CASE THE SCREENING PANEL BY A DECISION DATED MARCH 15, 1972 DETERMINED THAT THE BOARD SHOULD INQUIRE INTO THE COMPLAINT. IN ITS DECISION THE SCREENING PANEL GAVE REASONS WHY IT THOUGHT THE MATTERS RAISED BY THE COMPLAINANTS SHOULD BE DISPOSED OF BY AN INQUIRY PANEL. IT IS THAT DECISION THAT THE COMPLAINANTS SUBMIT IS BINDING ON THIS INQUIRY PANEL TO THE EXTENT THAT IT HAS PREDETERMINED THE PROCEDURES THAT THIS INQUIRY PANEL MUST FOLLOW IN DISPOSING OF THE MATTER.

7. IN OUR VIEW A CAREFUL READING OF THAT DECISION DOES NOT REFLECT THE INTERPRETATION THAT THE COMPLAINANTS WOULD HAVE IT BEAR. WHILE THE BOARD IN PARAGRAPH 2 OF ITS DECISION ALLUDED TO THE ARGUMENT OF COUNSEL FOR THE COMPLAINANTS THAT THE COMPLAINANTS BE AFFORDED AN OPPORTUNITY TO CALL EVIDENCE AND MAKE FULL ARGUMENT, IT VERY CAREFULLY HAS INDICATED IN PARAGRAPHS 4 AND 5 THAT THE SCREENING PANEL WAS "NOT DISPOSED TO DEPRIVE THE COMPLAINANTS OF AN OPPORTUNITY TO PRESENT THEIR CASE AT A HEARING BY THE BOARD". THE SCREENING

PANEL THEN WENT ON TO SAY THAT THE BOARD SHOULD "INQUIRE INTO THE COMPLAINT BY MEANS OF A HEARING BY THE BOARD". THAT DIRECTION IS NO MORE OR NO LESS A REFUSAL BY THE SCREENING PANEL TO DISMISS THE MATTER IN A SUMMARY WAY WITHOUT AFFORDING AN OPPORTUNITY FOR A HEARING. THAT DECISION IN OUR VIEW DOES NOT MEAN THAT THIS PANEL IS REQUIRED TO HEAR THE ACTUAL EVIDENCE GIVEN VIVA VOCE AND UNDER OATH. THE DIRECTION IS SIMPLY TO CONDUCT A HEARING WITHOUT ANY LIMITATION WHATSOEVER ON THIS PANEL OF THE BOARD.

8. SECONDLY, THERE IS NO HIERARCHY WITHIN THE BOARD. THE BOARD HAS OFTEN SAID THAT ONE PANEL OF THE BOARD WILL NOT SIT ON AN APPEAL FROM ANOTHER PANEL. EACH PANEL EXERCISES EQUAL AND CO-ORDINATE JURISDICTION, AND WHILE A DECISION OF THE SCREENING PANEL IS OF GREAT WEIGHT THERE IS NO STATUTORY AUTHORITY FOR IT TO BIND THIS PANEL IN THE PROCEDURES THAT IT WISHES TO FOLLOW.

9. THIRDLY, IN ITS PRELIMINARY ARGUMENT, COUNSEL FOR THE RESPONDENT, FORD, HAS PRESUMED, BUT WITHOUT PREJUDICE, THAT THE MATERIAL FACTS HAVE BEEN PROVEN FOR THE PURPOSES OF ITS ARGUMENT. SURELY THE COMPLAINANT'S POSITION CAN BE NO HIGHER THAN IF IT, IN FACT, PRESENTED ITS EVIDENCE. WHAT POINT WOULD THERE BE IN HEARING THE EVIDENCE IF THE RESPONDENT IS PREPARED TO ASSUME THE MATERIAL FACTS AGAINST IT FOR THE PURPOSE OF THIS ARGUMENT. IN OUR VIEW TO HEAR THE EVIDENCE IN THIS SITUATION WOULD BE A FRIVOLOUS EXERCISE. ACCORDINGLY, AS INDICATED AT THE HEARING WE ENTERTAINED THE PRELIMINARY OBJECTIONS AS IF THE MATERIAL FACTS ALLEGED BY THE COMPLAINANTS HAD IN FACT BEEN PROVEN.

10. A FURTHER ARGUMENT RAISED BY THE COMPLAINANTS IS THAT BECAUSE THE SCREENING PANEL HAS NOT SUMMARILY DISMISSED THE COMPLAINT AS IT MIGHT DO UNDER RULE 46, THAT A PRIMA FACIE CASE HAS BEEN MADE BY THE COMPLAINANTS. WHILE IT IS TRUE THAT IN SOME CASES THE BOARD HAS DISMISSED A COMPLAINT BECAUSE THE COMPLAINANT HAS NOT MADE OUT A PRIMA FACIE CASE, IT DOES NOT FOLLOW THAT A FAILURE TO DISMISS A COMPLAINT MEANS THAT A PRIMA FACIE CASE HAS BEEN MADE OUT. RULE 46 IS AN EXTRAORDINARY POWER THAT THE BOARD USES TO SUMMARILY DISMISS MATTERS THAT ARE FRIVOLOUS OR VEXATIOUS WITHOUT A HEARING. WHEN MATTERS ARE DISMISSED THE BOARD IS REQUIRED TO GIVE ITS REASONS FOR THE DISMISSAL. BUT THE CONVERSE, I.E. THAT EVERY CASE IN WHICH APPLICATIONS OR COMPLAINTS GO ON FOR HEARING IS PRIMA FACIE PROVEN IS NOT TRUE. THE CASES THAT GO ON FOR HEARING ARE CASES WHICH THE BOARD FEELS THAT A HEARING SHOULD BE HELD. IT PERMITS A HEARING FOR NUMEROUS REASONS THAT ARE NECESSARY IN THE PROPER ADMINISTRATION OF THE ACT. IN THIS CASE THE SCREENING PANEL SENT THE MATTER ON FOR REASONS THAT ARE VERY CLEARLY SPELLED OUT IN PARAGRAPH 4 OF ITS DECISION. IT INDICATED THAT THE COMPLAINANTS ALLEGE A BREACH OF SECTION 60 OF THE ACT WHICH IS "A COMPARATIVELY NEW STATUTORY DUTY", AND THAT "THERE ARE PROBLEMS WITH RESPECT TO THE RELIEF WHICH THE BOARD MAY GIVE UNDER THE SECTION...". IN THOSE AND OTHER CIRCUMSTANCES SUGGESTED BY THE BOARD IT WAS NOT DISPOSED TO SUMMARILY DISMISS THE COMPLAINT

OR TO DEPRIVE THE COMPLAINANTS OF AN OPPORTUNITY TO PRESENT THEIR CASE AT A HEARING BY THE BOARD.

11. FOR ALL THESE REASONS THE OBJECTION BY THE COMPLAINANTS TO THE BOARD'S ENTERTAINING THE PRELIMINARY OBJECTIONS IS DENIED.

12. WE NOW TURN TO THE PRELIMINARY OBJECTIONS RAISED BY THE RESPONDENT. IN ARGUMENT COUNSEL FOR THE COMPLAINANTS WITHDREW THE COMPLAINT INSOFAR AS IT RELATES TO SECTION 37 OF THE ACT. IN THESE CIRCUMSTANCES THE BOARD DISMISSES THE COMPLAINT INSOFAR AS IT RELATES TO SECTION 37 OF THE ACT.

13. THE FIRST MATTER RAISED BY WAY OF PRELIMINARY OBJECTION IS THE ALLEGATION OF THE COMPLAINANTS THAT SECTIONS 56 AND 58(A) HAVE BEEN VIOLATED. IN OUR VIEW THE MATERIAL ALLEGATIONS RELIED UPON DISCLOSE NO OFFENCE UNDER SECTIONS 56 OR 58(A) OF THE ACT. EVEN IF THE COMPLAINANTS WERE TO PROVE EACH AND EVERY FACT RELIED UPON IN ITS COMPLAINT WE WOULD BE HARD PUT TO FIND A VIOLATION OF THOSE SECTIONS. THERE IS NOTHING IN THE ALLEGATIONS TO INDICATE THAT THE AGGRIEVED EMPLOYEES WERE DEALT WITH BECAUSE THEY WERE MEMBERS OF THE TRADE UNION OR WERE EXERCISING RIGHTS UNDER THE ACT WITHIN THE MEANING OF SECTION 58(A), NOR IS THERE ANY ALLEGATION WHICH WOULD SUPPORT AN OFFENCE UNDER SECTION 56. GENERALLY, SECTION 56 IS TO PREVENT EMPLOYER DOMINATION OF TRADE UNIONS AND TO PROHIBIT AN EMPLOYER INTERFERING WITH THE ORGANIZATIONAL ACTIVITIES OF EMPLOYEES BY A TRADE UNION. IT DOES NOT PREVENT BARGAINING BETWEEN A UNION AND A COMPANY IN WHICH CERTAIN UNION MEMBERS MAY BE AFFECTED. IN OUR VIEW THE COMPLAINT DISCLOSES NO MATERIAL FACTS THAT WOULD BRING THIS MATTER WITHIN THE PURVIEW OF SECTIONS 56 AND 58(A).

14. FURTHER, THE COMPLAINANT RAISED SECTION 56 BY WAY OF AN AMENDMENT TO THE ORIGINAL COMPLAINT AND SUBSEQUENT TO THE DECISION OF THE SCREENING PANEL. IN OUR VIEW GIVEN THE HISTORY OF THE MATTER AND OF PREVIOUS COMPLAINTS FILED AND THE VARIOUS OPPORTUNITIES GIVEN TO PRESENT THE COMPLAINT WE ARE NOT DISPOSED TO GRANT LEAVE TO THE COMPLAINANTS TO AMEND THEIR COMPLAINT TO INCLUDE VIOLATIONS OF SECTION 56 AT THIS TIME. MOREOVER, WHEN ONE LOOKS AT WHAT PURPORTS TO BE THE THRUST OF THE COMPLAINT IT WOULD APPEAR THAT THE COMPLAINT IS MORE PROPERLY FOUND UNDER THE SPECIFIC PROVISIONS OF SECTION 60 RATHER THAN UNDER THE GENERAL PROVISIONS OF SECTIONS 56 AND 58(A). SINCE SECTION 60 IS DESIGNED TO DEAL WITH THE MATTERS SUGGESTED IN THE COMPLAINT IT WOULD APPEAR THAT THE SPECIFIC SECTION IS THE APPROPRIATE SECTION AND THAT SECTIONS 56 AND 58(A) ARE NOT APPROPRIATE IN THESE CIRCUMSTANCES.

15. ACCORDINGLY, THIS COMPLAINT INSOFAR AS IT RELATES TO SECTIONS 56 AND 58(A) IS DISMISSED.

16. THE NEXT MATTER TO BE DEALT WITH IS THE STATE OF THE PLEADINGS. IT IS ARGUED THAT THE COMPLAINT IS DEFICIENT IN THAT IT DOES

NOT SPECIFY WITH PARTICULARITY THE ACTS RELIED UPON. THE COMPLAINANTS ALLEGE INTER ALIA A COLLECTIVE AGREEMENT AND SUGGEST "COLLUSIVE AND SECRETIVE" DISCUSSIONS BETWEEN THE UNION AND THE COMPANY. THAT CLAIM BY THE COMPLAINANTS IS A SERIOUS ONE AND SET INTO CONFLICT TWO SEPARATE INTERESTS. ON THE ONE HAND THERE IS THE INTEREST OF THIS ADMINISTRATIVE AGENCY IN PROVIDING ACCESS TO LAYMEN IN THE PRESENTATION OF MATTERS BEFORE THE BOARD. OUR PRACTICE AND PROCEDURES ARE GEARED TO PERMITTING LAYMEN TO APPEAR AT THIS BOARD AND THE HISTORY OF THIS BOARD RECORDS THE FREQUENT APPEARANCES OF BUSINESS AGENTS, PERSONNEL OFFICERS, COMPANY REPRESENTATIVES AND EMPLOYEES WHO HAVE APPEARED IN A VARIETY OF CASES. WE HAVE CONSISTENTLY ATTEMPTED TO REMOVE THE OBSTACLES OF HIGHLY TECHNICAL AND COMPLEX LEGAL RULES SO AS TO ALLOW ACCESS TO THE BOARD BY NON-LAWYERS. THAT CONSIDERATION IS PARTICULARLY IMPORTANT IN CASES UNDER SECTION 60 OF THE ACT. IN THIS TYPE OF CASE THE EMPLOYEE USUALLY FEELS THAT HE HAS BEEN INJURED BY CERTAIN ACTIONS OF THE TRADE UNION AND IN SOME INSTANCES BY THE ACTIONS OF THE EMPLOYER. THIS EMPLOYEE APPLICANT WILL USUALLY NOT HAVE THE SAME ACCESS TO RESOURCES OR REPRESENTATION AS DOES THE TRADE UNION OR THE COMPANY. HAVING RELIED ON THE TRADE UNION AND ITS SKILLS AND EXPERTISE TO ASSIST HIM IN HIS EMPLOYMENT RELATIONSHIPS HE NOW FINDS HIMSELF CUT ADRIPT FROM THE VERY RESOURCES THAT HE HAS BECOME DEPENDENT UPON IN THE REPRESENTATION OF HIS EMPLOYEE INTERESTS. IT IS, THEREFORE, IN THIS TYPE OF SITUATION THAT THE INTERESTS IN HAVING A NON-TECHNICAL AND LIBERAL PROCEDURE BECOME APPARENT.

17. ON THE OTHER HAND WHERE PARTIES ARE REQUIRED TO ATTEND AT A HEARING AND PRESENT EVIDENCE AND WHERE THEIR LEGAL RIGHTS MAY BE AFFECTED, THE DICTATES OF NATURAL JUSTICE DEMAND THAT THEY BE GIVEN NOTICE OF THE CASE THEY ARE TO MEET SO THAT THEY WILL NOT BE TAKEN BY SURPRISE AND WILL BE ABLE TO ADEQUATELY PREPARE THEIR CASE. MOREOVER, OUR PROCEDURES HAVE NO PRETRIAL METHODS WHEREBY THE PARTIES MAY EXPLORE EACH OTHER'S POSITION WITH A VIEW TO ASCERTAINING THE CASE THEY ARE TO MEET.

18. THESE COMPETING INTERESTS ARE NO MORE EVIDENT THAN IN THIS CASE WHERE THERE IS A SUGGESTION OF CONSPIRACY BETWEEN THE COMPANY AND THE UNION TO THE DETRIMENT OF THE COMPLAINANTS. HOWEVER, IN CONSPIRACY CASES IT IS VIRTUALLY IMPOSSIBLE FOR A COMPLAINANT TO GIVE PARTICULARS OF HOW AND WHEN THE CONSPIRACY WAS MADE; THE MOST THAT HE CAN DO IS TO GIVE PARTICULARS OF THE OVERT ACTS ON WHICH HE RELIES. SEE BULLEN & LEAKE 11TH ED. P. 623. TO SOME EXTENT THIS HAS BEEN DONE.

19. AFTER DUE CONSIDERATION IT IS OUR VIEW THAT THE COMPETING INTERESTS OF THE PARTIES HERE, AND IN THIS TYPE OF CASE, MAY BE RESOLVED BY ADOPTING A LIBERAL ATTITUDE TO ADJOURNMENTS OR TO PERMITTING AMENDMENTS DURING THE COURSE OF THE PROCEEDINGS IF IT SHOULD BE NECESSARY. IF THERE IS AN ATTEMPT AT UNDUE ADVANTAGE THEN ADJOURNMENT MAY BE DENIED OR AT THE VERY LEAST MAY BE GRANTED UPON TERMS WITHIN THE BOARD'S RULES OF PROCEDURE. BUT THAT IS NOT TO SAY THAT THE PARTIES MAY SO DEPART FROM THE ISSUES AND MATERIAL FACTS ALLEGED

SO AS TO RAISE A NEW AND DIFFERENT COMPLAINT OR TO RAISE MATERIAL FACTS THAT WERE WITHIN THEIR KNOWLEDGE AT THE VERY OUTSET BUT NOT ALLEGED. WHILE THE PARTIES SHOULD BE ALLOWED SOME LATITUDE IN THE CALLING OF EVIDENCE WE ARE NOT DISPOSED TO RECEIVING EVIDENCE BASED ON MATERIAL FACTS WHICH WERE WITHIN THE KNOWLEDGE OF THE PARTY WHO SEEKS TO RELY UPON THEM BUT DID NOT PLEAD THEM. THIS BOARD WILL NOT CONDONE THE SUDDEN SPRINGING OF MATTERS WHICH ARE VAGUELY AVERTED TO IN THE PLEADINGS; WHERE THE PARTY HAS KNOWLEDGE OF THE MATERIAL FACTS IT HAS A STRONG OBLIGATION TO PLEAD THEM. THE MATTERS BEFORE THIS BOARD SHOULD NOT BE THE SUBJECT OF GAMESMANSHIP.

20. IN THIS CASE THERE APPEARS TO BE A SUFFICIENT ALLEGATION OF THE MATERIAL FACTS RELIED UPON TO ENABLE THE MATTER TO PROCEED. IF IT SHOULD APPEAR THAT FACTS COME OUT IN EVIDENCE OR ONE PARTY ATTEMPTS TO INTRODUCE FACTS WHICH CAUSE SURPRISE AND PREJUDICE TO THE OTHER PARTY THEN WE WILL DEAL WITH THOSE ISSUES AS THEY ARISE. WE ARE NOT PREPARED TO DISPOSE OF THIS COMPLAINT AT THIS STAGE OF THE PROCEEDINGS AND BY WAY OF A PRELIMINARY OBJECTION, AND THE PARTIES ARE DIRECTED TO PROCEED WITH THE EVIDENCE WITHOUT PREJUDICE TO ANY OF THE PARTIES TAKING ISSUE WITH THE EVIDENCE AS IT IS PRESENTED.

21. FORD HAS RAISED ANOTHER ISSUE AS TO WHETHER IT IS PROPERLY A PARTY TO THESE PROCEEDINGS. IN OUR VIEW WE DO NOT THINK THAT WE SHOULD FINALLY RULE ON THAT ISSUE AT THIS TIME. IN VIEW OF SECTION 79(4)(c) AND THE BROAD REMEDIAL POWERS GIVEN TO THIS BOARD INCLUDING THE VACATING OF THE PROVISIONS OF A COLLECTIVE AGREEMENT, WE PREFER TO HEAR THE EVIDENCE AND TO PERMIT THE EMPLOYER TO PARTICIPATE IN THE PROCEEDINGS BUT WITHOUT PREJUDICE TO ITS RIGHTS INCLUDING THE RIGHT TO RENEW ITS MOTION AT THE CONCLUSION OF THE EVIDENCE.

22. NOR ARE WE PREPARED AT THIS EARLY STAGE TO RULE AS THE UNION HAS REQUESTED THAT THE COMPLAINT DISCLOSES NO CAUSE OF ACTION UNDER THE ACT. THAT MOTION IS ALSO RESERVED UNTIL THE CONCLUSION OF THE EVIDENCE WITHOUT PREJUDICE TO THE UNION'S PARTICIPATION IN THE PROCEEDINGS.

23. THE REGISTRAR IS DIRECTED TO LIST THE MATTER FOR CONTINUATION OF HEARING.

56-71-T: IN THE MATTER OF A REQUEST BY THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA FOR CONSENT TO CONTINUE SUPERVISION OVER ITS LOCAL UNION NO. 93.

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: D. H. KATES AND ALBERT LALONDE APPEARING FOR THE UNITED BROTHERHOOD OF CARPENTERS AND JOINER OF AMERICA; GERALD O'NEIL, MARC LANDRY, MICHAEL KOMENDAT, DOMENIC CILIBERTO AND KARL FERK APPEARING ON THEIR OWN BEHALF.

DECISION OF THE BOARD:

SEPTEMBER 12, 1972.

1. ON MAY 4, 1971, THE GENERAL PRESIDENT OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (HEREINAFTER REFERRED TO AS THE INTERNATIONAL UNION) APPOINTED A COMMITTEE OF THREE PERSONS, CHAIRED BY WILLIAM STEFANOVITCH, A GENERAL EXECUTIVE MEMBER OF THE INTERNATIONAL UNION, TO INQUIRE INTO THE CONDUCT OF THE AFFAIRS OF LOCAL UNION No. 93. FOLLOWING ITS INQUIRY THE COMMITTEE SUBMITTED ITS REPORT DATED MAY 19, 1972 TO THE GENERAL PRESIDENT. ACTING ON THE FINDINGS AND RECOMMENDATIONS CONTAINED IN THE REPORT, THE GENERAL PRESIDENT APPOINTED ALBERT LALONDE, AN INTERNATIONAL REPRESENTATIVE, AS SUPERVISOR, EFFECTIVE JUNE 1, 1971, AND VESTED IN HIM FULL AUTHORITY TO CONDUCT THE AFFAIRS OF LOCAL UNION No. 93.

2. BY LETTER DATED MAY 12, 1972, THE SOLICITORS FOR THE INTERNATIONAL UNION REQUESTED THE CONSENT OF THE BOARD TO THE CONTINUATION OF THE SUPERVISION FOR A FURTHER PERIOD OF ONE YEAR FROM JUNE 1, 1972. IN THE LETTER OF MAY 12TH IT WAS NOTED THAT AMONGST THE REASONS ADVANCED BY THE COMMITTEE OF INQUIRY FOR THE IMPOSITION OF A SUPERVISION OVER LOCAL UNION No. 93 WAS THE SERIOUS DISRUPTION BEING CAUSED IN THE AFFAIRS OF THE LOCAL BY A PARTICULAR FACTION OF THE MEMBERSHIP. IN SUPPORT OF ITS REQUEST FOR THE CONTINUATION OF SUPERVISION FOR A FURTHER PERIOD OF A YEAR, THE SOLICITORS FOR THE INTERNATIONAL UNION SUBMITTED THAT WHILE MANY OF THE PROBLEMS IN EXISTENCE AT THE TIME SUPERVISION WAS IMPOSED HAD BEEN SOLVED OR LESSENED, THE DISRUPTING ELEMENT WITHIN THE LOCAL UNION CONTINUED TO OPERATE AND TO OPENLY ADVOCATE THE SEVERANCE OF THE PRESENT INTERNATIONAL CONNECTION AND THE CREATION OF AN INDEPENDENT CANADIAN UNION. THE SAID SOLICITORS ASSERT THAT THIS DISSENTING GROUP, WHICH IDENTIFIES ITSELF AS THE "CANADIAN LIBERATION MOVEMENT" CONTINUES TO ATTEND MONTHLY MEETINGS OF THE LOCAL UNION AND ATTEMPTS TO DISRUPT THE ORDERLY PROCEDURES OF THOSE MEETINGS. THE SOLICITORS IN THEIR LETTER OF MAY 12TH SUBMIT THAT IN THE FACT OF THIS CONTINUING THREAT TO THE EXISTENCE OF THE LOCAL UNION AND THE ORDERLY CONDUCT OF ITS AFFAIRS, THE INTERNATIONAL UNION DEEMED IT INADVISABLE TO TERMINATE THE SUPERVISION.

3. AT THE INITIAL HEARING OF THE INSTANT APPLICATION THE BOARD ADJOURNED THE PROCEEDINGS TO AFFORD THE APPLICANT AN OPPORTUNITY TO NOTIFY EACH MEMBER ON RECORD OF LOCAL UNION No. 93 OF THE REQUEST FOR THE CONTINUATION OF SUPERVISION OVER THE LOCAL. BY A DECISION DATED MAY 29, 1972, THE BOARD, STRICTLY AS AN INTERIM MEASURE, AGREED TO THE CONTINUATION OF SUPERVISION UNTIL SUCH TIME AS IT ISSUED A FURTHER DECISION. THE MATTER WAS LISTED FOR HEARING IN OTTAWA ON AUGUST 4, 21 AND 22 1972, AT WHICH TIME THE BOARD ALLOWED ALL PERSONS WITH AN INTEREST IN THE PROCEEDINGS TO ADDUCE EVIDENCE AND MAKE REPRESENTATIONS BOTH IN SUPPORT OF AND IN OPPOSITION TO THE CONTINUATION OF THE SUPERVISION.

4. A LARGE VOLUME OF EVIDENCE WAS ADDUCED RELATING TO ACTIVITIES WITHIN LOCAL UNION No. 93 PRIOR TO THE IMPOSITION OF SUPERVISION ON

JUNE 1, 1971. WE ARE NOT CALLED UPON TO MAKE A DETERMINATION ON THE MERITS OF THE ORIGINAL IMPOSITION OF SUPERVISION BY THE INTERNATIONAL UNION. IT IS APPARENT FROM THE EVIDENCE, HOWEVER, THAT THERE WERE A NUMBER OF SERIOUS CONFLICTS ON ISSUES BETWEEN INDIVIDUAL MEMBERS AND GROUPS OF MEMBERS OF THE LOCAL AND ALSO CLASHES OF PERSONALITY. MORE PARTICULARLY, THE TESTIMONY INDICATES THAT THERE WERE TWO OPPOSING FACTIONS WITHIN THE LOCAL. THE LEADING SPOKESMEN FOR ONE FACTION APPEARS TO HAVE BEEN GERALD O'NEIL AND MARC LANDRY, THE PRESIDENT OF THE LOCAL. THE OTHER FACTION APPEARS TO HAVE BEEN LED BY THE FOUR BUSINESS AGENTS FOR THE LOCAL WITH THE SUPPORT OF THE INTERNATIONAL UNION AND ITS OFFICERS RESPONSIBLE FOR THE OTTAWA AREA.

5. THE COMMITTEE WHICH CONDUCTED THE INQUIRY INTO THE AFFAIRS OF LOCAL UNION No. 93, IN ITS REPORT AS WELL AS RECOMMENDING THE APPOINTMENT OF A SUPERVISOR, RECOMMENDED THAT HE CARRY OUT THE FOLLOWING SPECIFIC FUNCTIONS: (1) DIRECT THE LOCAL IN IMPLEMENTING AN ORGANIZATIONAL PROGRAM IN THE HOUSE-BUILDING AND OTHER FIELDS OF THE CARPENTERS' JURISDICTION. (2) INVESTIGATE THE LOCAL'S HEALTH AND WELFARE PROGRAM AND THAT A FINAL DETERMINATION ON THIS MATTER BE RESOLVED BY THE MEMBERSHIP. (3) INSTITUTE A SHOP STEWARD TRAINING PROGRAM AND HAVE STEWARDS APPOINTED FOR EACH PROJECT. WITHOUT GOING INTO DETAIL, IT APPEARS FROM THE EVIDENCE THAT THE SUPERVISOR, ALBERT LALONDE, MADE SOME LIMITED PROGRESS WITH RESPECT TO ITEM (1) IN THE FLOORLAYING FIELD, WAS SUCCESSFUL IN HIS EFFORTS WITH RESPECT TO ITEM (2) AND TOOK NO ACTION WITH RESPECT TO ITEM (3). LALONDE TESTIFIED THAT HE DIVESTED MARC LANDRY OF HIS DUTIES AND RESPONSIBILITIES AS PRESIDENT OF THE LOCAL. HE ALSO REMOVED O'NEIL FROM HIS POSITION AS CHAIRMAN OF THE LOCAL'S BARGAINING COMMITTEE AND PERSONALLY TOOK OVER THE NEGOTIATIONS WHICH WERE IN PROGRESS WITH THE OTTAWA CONSTRUCTION ASSOCIATION AND CONCLUDED A COLLECTIVE AGREEMENT WHICH WAS RATIFIED BY THE CARPENTER MEMBERS OF THE LOCAL. FURTHER, HE NEGOTIATED A SEPARATE COLLECTIVE AGREEMENT COVERING THE FLOORLAYER MEMBERS OF THE LOCAL. THERE IS EVIDENCE WHICH WOULD SEEM TO INDICATE THAT AT LEAST SOME FLOORLAYER MEMBERS WERE LESS THAN HAPPY WITH THE MANNER IN WHICH LALONDE CONDUCTED THE NEGOTIATIONS AND THE TERMS OF SETTLEMENT WHICH HE SECURED. THERE IS ALSO EVIDENCE OF DISSATISFACTION AMONG SOME FLOORLAYERS AS TO THE QUALITY OF REPRESENTATION AFFORDED TO THEM ON PROJECTS AND MORE PARTICULARLY THE ABSENCE OF STEWARDS. LALONDE ENCOUNTERED OPPOSITION IN THE EFFORTS WHICH HE MADE TO REVISE THE FINANCIAL STRUCTURE OF THE LOCAL AND THE MEMBERSHIP BY A VOTE DEFEATED HIS ATTEMPT TO INCREASE THE MEMBERSHIP DUES. LALONDE, HOWEVER, APPEARS TO HAVE BEEN ABLE TO CONTROL AND GIVE DIRECTION TO THE ACTIVITIES OF THE LOCAL.

6. BY HIS OWN ADMISSION, LALONDE WAS ONLY ABLE TO DEVOTE A PART OF HIS TIME TO THE AFFAIRS OF THE LOCAL BECAUSE OF HIS OTHER RESPONSIBILITIES. ACCORDINGLY, AT THE BEGINNING OF JUNE 1972, THE GENERAL PRESIDENT OF THE INTERNATIONAL UNION APPOINTED HUGH ALLEN, ANOTHER INTERNATIONAL REPRESENTATIVE, TO ASSIST LALONDE IN THE SUPERVISION OF THE LOCAL. MORE PARTICULARLY, SINCE JUNE, ALLEN HAS CHAIRED THE MONTHLY

MEETINGS OF THE LOCAL. ALSO, HE WAS CHARGED WITH THE RESPONSIBILITY OF MAKING ARRANGEMENTS FOR THE CONDUCT OF ELECTIONS FOR A NEW SLATE OF OFFICERS, WHICH ELECTION WAS AUTHORIZED BY LALONDE. TOWARDS THIS END A MEETING WAS HELD ON AUGUST 10, 1972 AT WHICH NAMES OF MEMBERS WERE PLACED IN NOMINATION FOR THE VARIOUS OFFICES IN THE LOCAL AND THE ELECTION IS SCHEDULED TO BE HELD ON SEPTEMBER 13, 1972.

7. AS HAS BEEN STATED ABOVE, THE REASON ADVANCED BY THE SOLICITORS FOR THE INTERNATIONAL UNION IN THEIR LETTER OF MAY 12, 1972 FOR THE EXTENSION OF THE SUPERVISION UNTIL JUNE 1, 1973 WAS THAT A DISRUPTIVE ELEMENT WITHIN LOCAL UNION NO. 93 WAS ADVOCATING AND CONTINUING TO ADVOCATE THE SEVERANCE OF THE LOCAL UNION'S CONNECTION WITH THE PARENT BODY AND HAD THE AVOWED AIM OF CREATING AN INDEPENDENT CANADIAN UNION. WITHOUT COMMENTING ON THE MERITS OF THE REASON ADVANCED, THERE IS NO EVIDENCE BEFORE US THAT ANY OF THE MEMBERS OF LOCAL UNION NO. 93 ARE MEMBERS OF THE "CANADIAN LIBERATION MOVEMENT" NOR DOES THE EVIDENCE SUPPORT THE ALLEGATION THAT ANY MEMBER OR GROUP OF MEMBERS ARE EITHER ADVOCATING OR ATTEMPTING TO SEVER THE LOCAL'S RELATIONSHIP WITH THE PARENT BODY AND SET UP AN INDEPENDENT CANADIAN LOCAL UNION. THIS DOES NOT MEAN THAT THERE ARE STILL NO CONFLICTS BETWEEN FACTIONS WITHIN RESPECT TO BOTH THE ADMINISTRATION AND POLICIES OF THE LOCAL. THE NATURE OF THESE CONFLICTS, HOWEVER, IS NOT UNCOMMON IN ANY LOCAL TRADE UNION, OR FOR THAT MATTER ANY OTHER DEMOCRATICALLY-RUN ORGANIZATION.

8. NOTWITHSTANDING THE INTERNAL CONFLICTS AND PROBLEMS CONFRONTING LOCAL UNION NO. 93, WE ARE SATISFIED THAT THE LOCAL IS A TRADE UNION ORGANIZATION CAPABLE OF REGULATING RELATIONS BETWEEN THE EMPLOYEES IT REPRESENTS AND THEIR EMPLOYERS. LALONDE IN HIS TESTIMONY EXPRESSED THE OPINION THAT IN LIGHT OF THE PROBLEMS FACING THE LOCAL, THE OFFICERS ELECTED IN THE ELECTION SCHEDULED FOR SEPTEMBER 13, 1972 WOULD REQUIRE A PERIOD OF TRAINING UNDER SUPERVISION. BASED ON THE EVIDENCE BEFORE US, WE ARE NOT ABLE TO CONCUR IN THAT VIEW. WE SEE NO REASON WHY THE OFFICERS ELECTED ON SEPTEMBER 13, 1972 BY A DEMOCRATIC VOTE OF THE MEMBERS WOULD NOT BE ABLE AND SHOULD NOT ASSUME THE RESPONSIBILITIES OF THEIR RESPECTIVE OFFICES AND THE MANAGEMENT OF THE AFFAIRS OF LOCAL UNION NO. 93.

9. IN THE RESULT, THE REQUEST OF THE INTERNATIONAL UNION FOR THE CONTINUATION OF THE TRUSTEESHIP UNTIL JUNE 1, 1973 IS DENIED.

2172-72-JD: INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS UNION, LOCAL 89 (COMPLAINANT) V. SPRUCE FALLS POWER AND PAPER COMPANY LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J. D. BELL.

APPEARANCES AT THE HEARING: ERNEST ROVET FOR THE COMPLAINANT; C. G. RIGGS, T. P. McELHANNEY, G. INGRAM AND W. BARTLETT FOR THE RESPONDENT.

DECISION OF THE BOARD:

SEPTEMBER 19, 1972.

1. THE COMPLAINANT HAS REQUESTED THE BOARD TO ISSUE A DIRECTION UNDER SECTION 81 OF THE LABOUR RELATIONS ACT WITH RESPECT TO THE ASSIGNMENT OF CERTAIN TESTS CARRIED OUT IN ITS MILLS. PRIOR TO JUNE 26TH, 1972, THE TESTS WERE PERFORMED BY MEMBERS OF THE COMPLAINANT UNION. IT WAS PROPOSED BY THE RESPONDENT TO HAVE THIS WORK PERFORMED BY MEMBERS OF UNITED PAPERMAKERS AND PAPERWORKERS, LOCAL 256 AS OF 26TH OF JUNE, 1972.

2. THE RESPONDENT TOOK THE POSITION THAT THE BOARD IS WITHOUT JURISDICTION TO HEAR THE MATTER BY VIRTUE OF THE PROVISIONS OF SECTION 81 SUBSECTION 14 OF THE LABOUR RELATIONS ACT WHEN READ WITH THE PROVISIONS OF THE COLLECTIVE AGREEMENT. THIS AGREEMENT IS MADE BETWEEN:

UNITED PAPERMAKERS AND PAPERWORKERS
(LOCAL 256)

INTERNATIONAL BROTHERHOOD OF PULP,
SULPHITE AND PAPER MILL WORKERS
(LOCAL 89)

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
(LOCAL 1149)

AND

SPRUCE FALLS POWER AND PAPER COMPANY, LIMITED

AND

KIMBERLY-CLARK OF CANADA LIMITED
KAPUSKASING, ONTARIO

3. ARTICLES 5, 6 AND 38(H) OF THE COLLECTIVE AGREEMENT READ RESPECTIVELY AS FOLLOWS:

5. NEW POSITIONS AND TECHNICAL CHANGES

THE COMPANIES SHALL HAVE THE SOLE RIGHT TO ADJUST ALL OR ANY OF ITS CREWS ARISING OUT OF A CHANGE IN PROCESS OR A CHANGE IN EQUIPMENT, AND TO MAKE SUCH TECHNICAL AND OTHER CHANGES IN THEIR MANUFACTURING OPERATIONS AS THEY DEEM NECESSARY FOR EFFICIENT OPERATION. HOWEVER, PRIOR TO THE INSTALLATION OF ANY SUCH CHANGES, THE COMPANIES SHALL EXPLAIN THE CONTEMPLATED CHANGES TO THE DESIGNATED REPRESENTATIVES OF THE UNIONS. IN THE EVENT THE INTRODUCTION OF ANY NEW PROCESSES OR MACHINERY RESULTS IN LAYOFFS OR CHANGES IN WORKING CONDITIONS, THESE MATTERS SHALL BE DISCUSSED WITH THE

DESIGNATED UNION REPRESENTATIVES PRIOR TO THEIR INTRODUCTION.

WHEN AND AS OCCUPATIONS ARE CREATED, NOT LISTED ON THE ATTACHED WAGE SCHEDULES, OR EXISTING OCCUPATIONS ARE MODIFIED WHETHER BY REASON OF THE INSTALLATION OF LABOUR SAVING DEVICES OR BY THE INTRODUCTION OF NEW PROCESSES, THE RATES FOR SUCH OCCUPATIONS SHALL BE ESTABLISHED BY NEGOTIATION AT THAT TIME. AN INTERIM ADJUSTMENT MAY BE AGREED TO WITHOUT PREJUDICE TO THE UNION'S RIGHT TO NEGOTIATE A RETROACTIVE ADJUSTMENT TO THE RATE AT THE NEXT CONTRACT NEGOTIATIONS.

6. JURISDICTION

ALL EMPLOYEES WHO ARE EMPLOYED ON OCCUPATIONS WHICH HAVE THE RATE OF WAGES FIXED FOR THE TERM OF THIS AGREEMENT SHALL BE ELIGIBLE FOR MEMBERSHIP IN THE UNIONS. THE UNIONS UNDERTAKE TO SETTLE BETWEEN THEMSELVES QUESTIONS AS TO WHICH OF THE SIGNATORY UNIONS AN INDIVIDUAL EMPLOYEE SHALL BELONG.

38. ADJUSTMENT OF COMPLAINTS

(H) EITHER THE UNION OR THE COMPANY SHALL HAVE THE RIGHT TO SUBMIT ANY AND ALL DIFFERENCES CONCERNING THE INTERPRETATION, APPLICATION, ADMINISTRATION, OR ALLEGED VIOLATION OF THE AGREEMENT TO ARBITRATION, INCLUDING ANY QUESTION AS TO WHETHER A MATTER IS ARBITRABLE.

4. SECTION 81 SUBSECTION 14 OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

THE BOARD SHALL NOT INQUIRE INTO A COMPLAINT MADE BY A TRADE UNION, COUNCIL OF TRADE UNIONS, EMPLOYER OR EMPLOYERS' ORGANIZATION THAT HAS ENTERED INTO A COLLECTIVE AGREEMENT THAT CONTAINS A PROVISION REQUIRING THE REFERENCE OF ANY DIFFERENCE BETWEEN THEM ARISING OUT OF WORK ASSIGNMENT TO A TRIBUNAL MUTUALLY SELECTED BY THEM WITH RESPECT TO ANY DIFFERENCE AS TO WORK ASSIGNMENT THAT CAN BE RESOLVED UNDER THE COLLECTIVE AGREEMENT, AND SUCH TRADE UNION, COUNCIL OF TRADE UNIONS, EMPLOYER OR EMPLOYERS' ORGANIZATION SHALL DO OR ABSTAIN FROM DOING

ANYTHING REQUIRED OF IT BY THE DECISION OF SUCH TRIBUNAL.

5. THE QUESTION THEREFORE IS WHETHER THIS AGREEMENT CONTAINS A PROVISION REQUIRING THE REFERENCE OF ANY DIFFERENCE ARISING OUT OF A WORK ASSIGNMENT TO A TRIBUNAL MUTUALLY SELECTED BY THEM WITH RESPECT TO ANY DIFFERENCE AS TO WORK ASSIGNMENT THAT CAN BE RESOLVED UNDER THE COLLECTIVE AGREEMENT.

6. THERE CAN BE NO DOUBT THAT IN THE PRESENT CIRCUMSTANCES A DIFFERENCE HAS ARISEN OUT OF A WORK ASSIGNMENT OR MORE PROPERLY, OUT OF A CHANGE IN WORK ASSIGNMENTS.

7. THE COLLECTIVE AGREEMENT PROVIDES FOR A TRIBUNAL, UNDER SECTION 38(H) TO WHICH THE UNION OR THE COMPANY HAS THE RIGHT TO SUBMIT ANY AND ALL (EMPHASIS ADDED) DIFFERENCES CONCERNING THE INTERPRETATION ETC. OF THE AGREEMENT.

8. SECTION 38(G) PROVIDES THAT THE DECISION OF A BOARD OF ARBITRATION SHALL BE BINDING UPON THE PARTIES TO THE AGREEMENT. IT IS OF IMPORTANCE TO RECALL THAT THE TWO UNIONS CONCERNED IN THE PRESENT MATTER ARE PARTIES TO THE AGREEMENT IN QUESTION.

9. AS MAY BE OBSERVED, ARTICLE 6 OF THE AGREEMENT CARRIES THE HEADING "JURISDICTION". THE ARTICLE DESCRIBES THE TYPE OF EMPLOYEES ELIGIBLE FOR MEMBERSHIP IN THE UNIONS. THESE ARE EMPLOYEES WORKING IN OCCUPATIONS FOR WHICH A WAGE RATE HAS BEEN DETERMINED UNDER THE TERMS OF THE AGREEMENT. IT IS OBVIOUS THAT THE OCCUPATIONS FOR WHICH A RATE HAS BEEN SET (THE AGREEMENT PROVIDES FOR NEGOTIATION OF RATES FOR NEW JOBS) ARE DEEMED TO FALL WITHIN THE JURISDICTION OF ONE OR THE OTHER OF THE UNIONS. THE UNIONS UNDERTAKE TO SETTLE BETWEEN THEMSELVES THE QUESTION AS TO WHICH JURISDICTION IS TO GOVERN. THE EMPLOYEE'S UNION MEMBERSHIP ELIGIBILITY IS THEREFORE DETERMINED BY THE ANSWER TO THE JURISDICTIONAL QUESTION. ANY DISAGREEMENT ON THAT POINT CONSTITUTES A JURISDICTIONAL DISPUTE WHICH THE UNIONS HAVE UNDERTAKEN, IN THE COLLECTIVE AGREEMENT, TO SETTLE.

10. SINCE UNDER SECTION 38(H) EITHER THE UNION OR THE COMPANY MAY SUBMIT ANY AND ALL DIFFERENCES HAVING TO DO WITH THE INTERPRETATION APPLICATION ADMINISTRATION OR ALLEGED VIOLATION OF THE AGREEMENT TO ARBITRATION AND SINCE ARTICLE 6 DEALS WITH JURISDICTIONAL MATTERS, THE AGREEMENT PLAINLY PROVIDES FOR A TRIBUNAL WHICH MEETS THE REQUIREMENTS OF SECTION 81(14) OF THE ACT.

11. IN VIEW OF THE SPECIAL CIRCUMSTANCES OF THIS CASE AND THE PROVISIONS OF SECTION 81(14) OF THE ACT, THE BOARD FINDS THAT IT IS PROHIBITED FROM INQUIRING INTO THE COMPLAINT. THE REQUEST OF THE COMPLAINANT IS ACCORDINGLY DENIED.

2252-72-U: FRANK SIDNEY PARRILL (COMPLAINANT) V. GENERAL TRUCK DRIVERS' UNION, LOCAL 938 (RESPONDENT) V. DIRECT WINTERS TRANSPORT LIMITED (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: F. W. PARK AND FRANK S. PARRILL FOR THE COMPLAINANT; HERBERT R. RAGSDALE AND VAL NEAL FOR THE RESPONDENT; M. G. MITCHNICK AND H. S. PALMER FOR THE INTERVENER.

DECISION OF THE BOARD:

SEPTEMBER 18, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGED THAT HE HAD BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 60 OF THE ACT. THE COMPLAINANT IN HIS COMPLAINT REQUESTED "THAT THE BOARD DETERMINE THAT THE RESPONDENT UNION PROCESS HIS GRIEVANCE SO THAT HE MAY BE RECALLED TO THE HIGHWAY DEPARTMENT OF DIRECT WINTER TRANSPORT LIMITED ON THE BASIS OF SENIORITY." THE COMPLAINANT ALSO ALLEGED THAT "DIRECT WINTERS TRANSPORT LIMITED HAS FAILED TO RECALL THE SAID GRIEVOR AND HAS VIOLATED HIS SENIORITY RIGHTS UNDER THE COLLECTIVE BARGAINING AGREEMENT IN FORCE." ALTHOUGH NOT NAMED AS A RESPONDENT IN THESE PROCEEDINGS, DIRECT WINTERS TRANSPORT LIMITED, HAVING BEEN NAMED BY THE COMPLAINANT AS AN ORGANIZATION THAT MAY BE AFFECTED BY THESE PROCEEDINGS, WAS REPRESENTED AT THE HEARING IN THIS MATTER AND PARTICIPATED IN THESE PROCEEDINGS WITHOUT OBJECTION FROM THE COMPLAINANT. THE STYLE OF CAUSE IN THIS MATTER IS ACCORDINGLY AMENDED TO ADD DIRECT WINTERS TRANSPORT LIMITED AS AN INTERVENER.

2. THE RESPONDENT AND THE INTERVENER, BY WAY OF PRELIMINARY OBJECTION, RAISED THE ISSUE OF THE JURISDICTION OF THE BOARD TO HEAR THE COMPLAINT ON THE GROUNDS THAT IT CAME UNDER THE JURISDICTION OF THE CANADA LABOUR RELATIONS BOARD.

3. THE EVIDENCE ESTABLISHED THAT THE INTERVENER WAS PROPERLY LICENSED TO TRANSPORT GOODS FROM ONTARIO TO THE UNITED STATES AND TO THE PROVINCE OF QUEBEC AND THAT SIXTY-SEVEN PER CENT OF THE INTERVENER'S BUSINESS IS OF AN INTERPROVINCIAL OR OF AN INTERNATIONAL NATURE IN THAT THE RESPONDENT MOVES GOODS TO AND FROM THE PROVINCE OF ONTARIO FROM AND TO POINTS IN QUEBEC AND THE STATES OF NEW YORK AND MICHIGAN.

4. THE BOARD THEREFORE FINDS THAT THE EVIDENCE ESTABLISHED THAT THE UNDERTAKING OF THE INTERVENER FALLS WITHIN THE PROVISIONS OF SECTION 92(10)(A) OF THE BRITISH NORTH AMERICA ACT AND THAT THIS BOARD IS WITHOUT JURISDICTION TO DEAL WITH ANY MATTER WHICH CONCERNS THE LABOUR RELATIONS OF THE INTERVENER. (SEE RE TANK TRUCK TRANSPORT LTD. [1961] 25 D.L.R. (2d) 161; REFERENCE RE VALIDITY OF INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT (CAN.), AND APPLICABILITY IN RESPECT OF CERTAIN EMPLOYEES OF EASTERN CANADA STEVEDORING CO. LTD. [1955] 3 D.L.R. 721, S.C.R. 529).

5. COUNSEL FOR THE COMPLAINANT ARGUED THAT THE BOARD HAD JURISDICTION TO HEAR THE COMPLAINT AGAINST THE RESPONDENT UNION IN THIS MATTER ON THE GROUNDS THAT A COMPLAINT UNDER SECTION 60 OF THE ACT IS A COMPLAINT CONCERNING THE FAILURE OF THE RESPONDENT TO FAIRLY REPRESENT THE COMPLAINANT. WHILE THE LEGISLATURE OF THE PROVINCE OF ONTARIO HAS ENACTED LEGISLATION WITH RESPECT TO FAIR REPRESENTATION (SEE SECTION 60 OF THE ACT) THE FEDERAL GOVERNMENT HAS NOT SEEN FIT TO DO SO. COUNSEL FOR THE COMPLAINANT ACCORDINGLY ARGUED THAT THE FIELD OF FAIR REPRESENTATION WAS AN UNOCCUPIED AREA IN SO FAR AS THE FEDERAL GOVERNMENT WAS CONCERNED AND ACCORDINGLY THE PROVINCIAL GOVERNMENT WAS ENTITLED TO ENACT LEGISLATION IN THIS AREA WHICH IS APPLICABLE WITHOUT RESTRICTION. IT WAS THEREFORE ARGUED THAT THE COMPLAINANT WAS ENTITLED TO THE RELIEF AFFORDED UNDER THE PROVISIONS OF SECTION 60 EVEN THOUGH THE UNDERTAKING OF THE INTERVENER FELL WITHIN FEDERAL JURISDICTION IN OTHER MATTERS.

6. HAVING CONSIDERED THE EVIDENCE IN THIS CASE AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT THE AREA OF FAIR REPRESENTATION IS ONLY ONE ASPECT OF LABOUR RELATIONS AND IS NOT "AN UNOCCUPIED AREA" FOR JURISDICTIONAL PURPOSES. WHAT WE ARE HERE CONCERNED WITH IS THE ALLEGATION THAT THE RESPONDENT HAS FAILED TO PROPERLY REPRESENT THE COMPLAINANT WITH RESPECT TO HIS EMPLOYMENT RELATIONSHIP WITH HIS EMPLOYER. SINCE MATTERS CONCERNING THE LABOUR RELATIONS OF THE EMPLOYER FALL WITHIN FEDERAL JURISDICTION, THIS BOARD HAS NO JURISDICTION TO ENTERTAIN A COMPLAINT CONCERNING SUCH MATTER. THE SUBJECT OF FAIR REPRESENTATION IS NOT SEVERABLE FROM THE BROADER FIELD OF LABOUR RELATIONS BUT IS AN INTEGRAL PART THEREOF. WHILE THE FEDERAL GOVERNMENT MAY HAVE CHOSEN NOT TO ENACT LEGISLATION WITH RESPECT TO SUCH MATTER, THIS ASPECT OF LABOUR RELATIONS IS NOT THEREBY TRANSFERRED TO PROVINCIAL JURISDICTION, IN OUR OPINION. THE BROAD SUBJECT OF LABOUR RELATIONS HAS MANY ASPECTS. A PERSON IS NOT ENTITLED TO PICK AND CHOOSE DIFFERENT RELIEF WHICH MAY BE OFFERED UNDER FEDERAL OR PROVINCIAL STATUTES. IF LABOUR RELATIONS, AS THEY APPLY TO THE COMPLAINANT AND HIS EMPLOYER, FALL WITHIN FEDERAL JURISDICTION, THE FACT THAT THE FEDERAL INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT DOES NOT PROVIDE THE DESIRED RELIEF IS NOT A MATTER WITH WHICH THIS BOARD CAN CONCERN ITSELF.

7. SINCE WE HAVE FOUND THAT THE LABOUR RELATIONS OF DIRECT WINTERS TRANSPORT LIMITED FALL UNDER FEDERAL JURISDICTION, WE ACCORDINGLY FIND FOR THE REASONS SET OUT ABOVE AND FOR THE REASONS GIVEN BY THE BOARD IN THE MURRAY GETTY V. THE CANADIAN PACIFIC RAILWAYS AND BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES AND CANADA, LOCAL 855 CASE [1972] OLRB REP. 287 AND THE WILLIAM CAMPBELL V. INTER-CITY TRUCK LINES LIMITED, AND TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION 880 CASE [1972] OLRB REP. 385 THAT THE BOARD IS WITHOUT JURISDICTION TO DEAL WITH THE COMPLAINT AGAINST THE RESPONDENT UNION IN THE INSTANT CASE.

8. THE PROCEEDINGS IN THIS MATTER ARE THEREFORE TERMINATED.

2034-72-R: SERVICE EMPLOYEES UNION LOCAL 268 AFFILIATED WITH THE S.E.I.U. AF OF L., C.I.O. & C.L.C. (APPLICANT) V. IRON RANGE BUS LINES LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

APPEARANCES AT THE HEARING: MARTIN LEVINSON AND LARRY O'BRIEN FOR THE APPLICANT; G. W. HATELY, Q.C. FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER E. BOYER: SEPTEMBER 20, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. AN EXAMINATION OF THE DOCUMENTS FILED AS EVIDENCE OF MEMBERSHIP IN THIS APPLICATION DISCLOSES THAT THEY TAKE THE FORM OF COMBINED APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT AND RECEIPTS. THESE APPLICATIONS, HOWEVER, DENOTE MEMBERSHIP IN SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 268. THE QUESTION BEFORE THE BOARD IS WHETHER THESE DOCUMENTS IN EFFECT CONSTITUTE APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT, SERVICE EMPLOYEES UNION LOCAL 268. PUT ANOTHER WAY, ARE THESE DOCUMENTS DEFECTIVE BY REASON OF THE FACT THAT BY ATTACHING AN APOSTROPHE UPON THE WORD "EMPLOYEES" AND INSERTING THEREAFTER THE WORD "INTERNATIONAL" SUCH THAT THEY DO NOT PROPERLY SET OUT THE CORRECT CHARTERED NAME OF THE APPLICANT?

3. IN THE GORDON A. MACEachern LIMITED CASE, (BOARD FILE NO. 1703-71-R), THE BOARD IN ITS DECISION DATED MAY 2, 1972, FOUND THAT THE DOCUMENTS FILED BY THE APPLICANT AS EVIDENCE OF MEMBERSHIP, WHICH CONSISTED OF COMBINED APPLICATIONS AND RECEIPTS, WERE DEFECTIVE ON THE BASIS THAT THE APPLICATIONS WERE "FOR MEMBERSHIP IN BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 268 AND NOT FOR MEMBERSHIP IN THE APPLICANT SERVICE EMPLOYEES UNION LOCAL 268."

4. ON THE ONE HAND, THE POLICY OF THE BOARD IN RELATION TO EVIDENCE OF MEMBERSHIP IS CLEAR THAT IS STATED IN THE FRANK LICARI & SONS CASE, O.L.R.B. M.R. APRIL 1967, P. 57 AT P. 59 AS FOLLOWS:

"AS HAS BEEN POINTED OUT IN MANY DECISION, THE BOARD IS DEPENDENT TO A LARGE EXTENT ON THE DOCUMENTARY EVIDENCE FILED BY THE UNION BECAUSE IT WOULD BE AN IMPOSSIBLE TASK FOR IT TO VERIFY THE MEMBERSHIP EVIDENCE FOR EVERY INDIVIDUAL BY CONDUCTING A PERSONAL INQUIRY. IT IS INCUMBENT, THEREFORE, UPON UNIONS, TO BE MOST CIRCUMSPECT WITH THE DOCUMENTARY EVIDENCE THEY FILE AND TO MAKE SURE THAT IT IS ACCURATE IN ALL RESPECTS."

SEE ALSO MUNICIPALITY OF METRO TORONTO CASE O.L.R.B. M.R. SEPTEMBER 1967, P. 573; PRESTIGE DRY WALL LTD., O.L.R.B. M.R. APRIL 1968, P. 59; FERRITRONICS LTD., O.L.R.B., M.R. MARCH 1969, P. 1286; DINTY'S FRIED CHICKEN, O.L.R.B. M.R. JULY 1970, P. 511 AND LE DROIT LTEE. O.L.R.B. M.R. DECEMBER, 1970, P. 945.

5. NEVERTHELESS, IN OUR OPINION, THE DEFECT IN THE EVIDENCE OF MEMBERSHIP MUST BE SUFFICIENTLY SIGNIFICANT SO AS TO MAKE IT UNCERTAIN AS TO WHETHER THESE DOCUMENTS DO IN FACT REFER TO THE APPLICANT. THUS THE BOARD, IN THE J. D. CARRIER SHOE COMPANY LIMITED CASE, O.L.R.B. M.R. APRIL, 1968, P. 54 STATED AT PAGE 56 AS FOLLOWS:

"THE APPLICANT, FOR REASONS BEST KNOWN TO ITSELF, HAS CHOSEN TO USE MEMBERSHIP CARDS WHICH DO NOT SET OUT THE CORRECT CHARTERED NAME OF THE APPLICANT AND THEREFORE THE APPLICANT MUST ASSUME FULL RESPONSIBILITY FOR THE RESULTS WHICH FLOW FROM ITS PRACTICE IN THIS REGARD. THE DIFFERENCE BETWEEN THE CHARTERED NAME OF THE APPLICANT AND THE NAME APPEARING ON THE MEMBERSHIP CARDS CANNOT BE CLASSIFIED AS A MERE TECHNICAL DEFECT. IT IS RECOGNIZED THAT LOCAL UNIONS OFTEN OMIT PART OF THEIR FULL CHARTERED NAME FOR THE PURPOSE OF BREVITY, BUT USUALLY THE LOCAL NUMBER IS RETAINED FOR IDENTIFICATION PURPOSES. IF, IN THE INSTANT CASE, THE CARDS WERE FOR MEMBERSHIP IN "LOCAL 82 OF THE AMALGAMATED MEAT CUTTERS", IT COULD NOT BE SERIOUSLY ARGUED THAT CONFUSION WOULD RESULT OR THAT ANYONE MIGHT BE MISLED."

6. IN OUR OPINION, THE CASES REFERRED TO IN PARAGRAPH #4 HEREIN TOGETHER WITH THE GORDON A. MACEachern LIMITED CASE ARE DISTINGUISHABLE ON THE BASIS THAT THERE WERE SUBSTANTIAL DEFECTS IN IDENTIFYING THE EVIDENCE OF MEMBERSHIP AS REFERRING TO THE UNION IN QUESTION. WE FIND THAT THE OMISSIONS AS REFERRED TO IN PARAGRAPH #2 HEREIN, CONSTITUTE MERE TECHNICAL DEFECTS AND THAT NO ONE COULD REASONABLY BE MISLED OR CONFUSED AS REGARDS ITS APPLICABILITY TO THE APPLICANT.

7. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT THUNDER BAY, SAVE AND EXCEPT SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, PERSONS EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE APPLICANT HAS CHALLENGED THE AMENDED LIST OF EMPLOYEES AS FILED BY THE RESPONDENT IN THIS MATTER. IN THESE CIRCUMSTANCES, MR. J.

R. HENDERSON, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT BACK TO THE BOARD ON THE SAID LIST.

DECISION OF BOARD MEMBER J. D. BELL: SEPTEMBER 20, 1972.

1. THE MAJORITY OF THE BOARD IN PARAGRAPH 4 OF ITS DECISION QUOTES THE FRANK LICARI & SONS CASE, O.L.R.B. M.R. APRIL 1967, P. 57 AT P. 59. THE LAST SENTENCE READS:

"IT IS INCUMBENT, THEREFORE, UPON UNIONS, TO BE MOST CIRCUMSPECT WITH THE DOCUMENTARY EVIDENCE THEY FILE AND TO MAKE SURE THAT IT IS ACCURATE IN ALL RESPECTS." (UNDERLINING ADDED)

2. FURTHERMORE, THE MUNICIPALITY OF METRO TORONTO CASE, O.L.R.B., M.R. SEPTEMBER 1967, P. 573; PRESTIGE DRY WALL LTD., O.L.R.B., M.R. APRIL 1968, P. 59; FERRITRONICS LTD., O.L.R.B., M.R. MARCH 1969, P. 1286; DINTY'S FRIED CHICKEN, O.L.R.B., M.R. JULY 1970, P. 511 AND LE DROIT LTEE., O.L.R.B., M.R. DECEMBER 1970, P. 945 QUOTED BY THE MAJORITY IN PARAGRAPH 4 BEAR OUT THIS IMPORTANT REQUIREMENT.

3. THERE IS NO ACCEPTABLE REASON FOR AN APPLICANT UNION TO NOT HAVE ITS NAME ACCURATE IN ALL RESPECTS. THIS DEFECT IN THE EVIDENCE OF MEMBERSHIP CREATES A DOUBT AS TO WHO THE DOCUMENTS REFER. THIS OMISSION IS THE RESULT OF THE APPLICANTS CARELESSNESS AND IT SHOULD NOT BE LABELLED A MERE TECHNICAL DEFECT.

4. I WOULD DISMISS THIS APPLICATION.

2436-72-U: NICHOLAS E. ERDELYI (COMPLAINANT) V. THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS - LOCAL LODGE #2330 (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J. D. BELL.

DECISION OF THE BOARD: SEPTEMBER 29, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT HE HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 60 OF THE ACT. A FIELD OFFICER WAS APPOINTED AND HE HAS NOW SUBMITTED HIS REPORT TO THE BOARD. MORE PARTICULARLY, THE COMPLAINANT ALLEGES THAT THE RESPONDENT 'HAS NOT REPRESENTED ME ADEQUATELY ACCORDING TO THE LABOUR RELATIONS ACT AND ITS OWN CHARTER' AND ASKS THAT HE BE COMPENSATED FOR APPROXIMATELY SIX WEEKS' LOST WAGES. HE ALSO ASKS THAT THE UNION BE REQUIRED TO NEGOTIATE WITH HIS FORMER EMPLOYER, LONG MANUFACTURING DIVISION OF BORG-WARNER (CANADA) LIMITED, FOR HIS REINSTATEMENT IN EMPLOYMENT.

2. THE COMPLAINANT WAS FIRED IN JANUARY OF 1972. DURING THE MONTH OF DECEMBER HE HAD BEEN SUSPENDED FOUR TIMES AND HAD FILED GRIEVANCES IN CONNECTION WITH EACH SUSPENSION. THE RESPONDENT'S POSITION IS THAT THESE GRIEVANCES WERE PROPERLY PROCESSED BY THE RESPONDENT'S LOCAL SHOP COMMITTEE AND WERE STILL IN THE GRIEVANCE PROCEDURE WHEN THE COMPLAINANT WAS FINALLY DISMISSED ON JANUARY 7, 1972. THE COMPLAINANT THEN LODGED A GRIEVANCE IN CONNECTION WITH HIS DISMISSAL. THE RESPONDENT UNION THEN DISCUSSED THE LAST GRIEVANCE WITH THE EMPLOYER AND REQUESTED THE REASONS FOR THE DISMISSAL AND ALSO A COPY OF THE COMPLAINANT'S WORK RECORD. THIS RECORD INDICATES THAT BETWEEN AUGUST 22, 1969 UP TO THE DATE OF HIS DISMISSAL, THE COMPLAINANT HAD BEEN DISCIPLINED ON 20 OCCASIONS, 16 OF WHICH WERE FOR INSUBORDINATION. THE DISCIPLINE INVOKED VERGED FROM VERBAL WARNINGS, THROUGH WRITTEN WARNINGS TO SUSPENSIONS. THE DISMISSAL RESULTED FROM AN ALLEGED ACT OF INSUBORDINATION.

3. A REPRESENTATIVE OF THE RESPONDENT MET WITH THE COMPLAINANT TO DISCUSS THE DISMISSAL AND SO BE IN A POSITION TO MAKE A RECOMMENDATION TO THE MEMBERSHIP OF THE UNION ON THE DISPOSITION OF THE VARIOUS GRIEVANCES. PRIOR TO THIS MEETING THE REPRESENTATIVE ARRANGED FOR THE COMPANY TO REINSTATE THE COMPLAINANT PROVIDED THE REPRESENTATIVE COULD PERSUADE THE COMPLAINANT TO AGREE TO FOLLOW INSTRUCTIONS IN THE FUTURE AND TO DO AS HE WAS ORDERED WITH THE RIGHT TO GRIEVE AFTERWARDS IF HE FELT THE ORDER WAS UNJUST. THE COMPLAINANT REFUSED TO GIVE ANY SUCH ASSURANCE AND STATED HE WANTED HIS GRIEVANCE TO GO TO ARBITRATION. HE WAS INFORMED BY THE REPRESENTATIVE THAT THAT DECISION WOULD BE A DECISION OF THE MEMBERSHIP, FOLLOWING A RECOMMENDATION OF THE LOCAL SHOP COMMITTEE. THE COMPLAINANT WAS INFORMED OF THE TIME AND PLACE OF THE NEXT REGULAR LOCAL LODGE MEETING. THE COMPLAINANT WAS ALSO INFORMED THAT IF THE MEMBERSHIP DECIDED NOT TO PROCEED TO ARBITRATION, THE COMPLAINANT WOULD HAVE THE RIGHT TO PROCEED WITH THE GRIEVANCE BUT AT HIS OWN EXPENSE.

4. AT THE LOCAL LODGE MEETING HELD ON JANUARY 23, 1972, THE SHOP COMMITTEE RECOMMENDATION WAS THAT THE UNION DID NOT HAVE A SUFFICIENT CASE TO PROCEED TO ARBITRATION. THERE WAS DISCUSSION ON THIS QUESTION AND THE MEMBERSHIP BY SECRET BALLOT VOTE UPHELD THE RECOMMENDATION OF THE SHOP COMMITTEE BY A VOTE OF 26 TO 7. THE COMPLAINANT DID NOT ATTEND THE MEETING, ALTHOUGH HE WAS INVITED TO DO SO.

5. AFTER CAREFULLY CONSIDERING THE ABOVE FACTS, AS WELL AS THE STATEMENT OF THE COMPLAINANT GIVEN TO THE FIELD OFFICER, WE ARE UNABLE TO FIND ANYTHING WHICH SUGGESTS THAT THE RESPONDENT HAS ACTED IN A MANNER THAT WAS ARBITRARY, DISCRIMINATORY, OR IN BAD FAITH IN THE REPRESENTATION OF THE COMPLAINANT. AS NOTED ABOVE, THE COMPLAINANT SUGGESTS THAT HE HAS NOT BEEN REPRESENTED ADEQUATELY BY THE RESPONDENT. THAT, HOWEVER, IS NOT THE QUESTION WITH WHICH THE BOARD MUST CONCERN ITSELF. SECTION 60 OF THE LABOUR RELATIONS ACT SPEAKS OF ARBITRARINESS, DISCRIMINATION AND BAD FAITH. CLEARLY THERE IS NOTHING BEFORE US WHICH WOULD SUGGEST THAT THE UNION OR ITS REPRESENTATIVES ACTED IN BAD FAITH.

NOR IS THERE ANYTHING FROM WHICH WE COULD INFER THAT THE UNION ACTED IN A DISCRIMINATORY MANNER TOWARDS THE COMPLAINANT. THUS THERE IS NO SUGGESTION THAT ANOTHER UNION MEMBER'S CASE IN A SIMILAR POSITION WOULD HAVE BEEN DEALT WITH DIFFERENTLY. FINALLY, WE ARE UNABLE TO FIND ANYTHING IN THE MATERIAL BEFORE US WHICH WOULD LEAD TO AN INFERENCE OF ARBITRARINESS. THE DECISION ARRIVED AT WAS MADE AFTER A REPRESENTATIVE OF THE RESPONDENT DISCUSSED THE MATTER WITH THE EMPLOYER AND IN FACT NEGOTIATED A SETTLEMENT. THE COMPLAINANT REFUSED TO ACCEPT THIS SETTLEMENT. THE LOCAL SHOP COMMITTEE THEN PUT THE MATTER BEFORE THE MEMBERSHIP OF THE UNION. THE COMPLAINANT WAS ENTITLED TO BE PRESENT AT THE MEETING AND TO STATE HIS CASE. HE CHOSE NOT TO DO SO. THE DECISION WAS MADE ON THE BASIS OF A SECRET BALLOT AND ONLY AFTER DISCUSSIONS BY THE UNION MEMBERSHIP. THERE IS NO SUGGESTION OF ARBITRARINESS ANYWHERE IN THIS PROCEDURE OR IN THE WAY THE FINAL DECISION WAS MADE.

6. HAVING REGARD TO THE ABOVE MATTERS, WE ARE OF THE OPINION THAT THIS IS NOT A CASE WHICH SHOULD BE DEALT WITH BY MEANS OF A FORMAL HEARING BY THE BOARD. THERE IS NOTHING BEFORE US WHICH WOULD SUGGEST THAT SECTION 60 OF THE ACT HAS BEEN VIOLATED BY THE RESPONDENT IN ANY WAY.

7. IN THE RESULT, THEREFORE, THIS COMPLAINT IS DISMISSED.

8. IN THE EVENT THAT THE COMPLAINANT IS OF THE VIEW THAT THE BOARD HAS ERRED IN A MATERIAL RESPECT, IT IS OPEN TO THE COMPLAINANT TO REQUEST THE BOARD TO RECONSIDER ITS DECISION, PURSUANT TO THE PROVISIONS OF SECTION 95(1) OF THE LABOUR RELATIONS ACT.



CASE LISTINGS SEPTEMBER 1972

	PAGE
1. CERTIFICATION	
(A) BARGAINING AGENTS CERTIFIED	223
(B) APPLICATIONS DISMISSED	233
(C) APPLICATIONS WITHDRAWN	236
2. APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	237
3. APPLICATION FOR DECLARATION OF SUCCESSOR STATUS	239
4. APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL	239
5. APPLICATIONS FOR CONSENT TO PROSECUTE	240
6. COMPLAINTS UNDER SECTION 79 (FORMERLY S.65) (UNFAIR LABOUR PRACTICE)	241
7. APPLICATION UNDER SECTION 55 (FORMERLY S. 47A)	243
8. APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))	243
9. APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	243

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 96

(FORMERLY S. 79A)

1714-71-M: THE COUNCIL OF PRINTING INDUSTRIES OF CANADA, (REPRESENTING THE ATTACHED LIST OF EMPLOYERS) (EMPLOYER) V. TORONTO PHOTO-ENGRAVERS UNION LOCAL NO. 35-P, LPIU AND LOCAL 242, HAMILTON, LPIU (TRADE UNION). (REQUEST DENIED).

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING SEPTEMBER 1972

BARGAINING AGENTS CERTIFIED DURING SEPTEMBER

NO VOTE CONDUCTED

1494-71-R: MILLWRIGHTS' LOCAL UNION 2309, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. GEORGE R. HALL, INC. (RESPONDENT) V. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (INTERVENER).

UNIT: "ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERINTENDENT AND PERSONS ABOVE THE RANK OF SUPERINTENDENT." (11 EMPLOYEES IN THE UNIT).

1758-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. I.M.I. UNDERGROUND CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS OF THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (NO EMPLOYEES IN THE UNIT).

1990-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. FRONT-ENAC-LENNOX AND ADDINGTON COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT #1: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT ASSISTANT ADMINISTRATOR AND PERSONS ABOVE THE RANK OF ASSISTANT ADMINISTRATOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (15 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

2078-72-R: NURSES' ASSOCIATION SENSENBRENNER HOSPITAL (APPLICANT) V. SENSENBRENNER HOSPITAL (RESPONDENT).

UNIT #1: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT KAPUSKASING IN A NURSING CAPACITY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (23 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL REGISTERED AND GRADUATE NURSES REGULARLY EMPLOYED BY THE RESPONDENT AT KAPUSKASING IN A NURSING CAPACITY FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS INCLUDED IN BARGAINING UNIT #1." (12 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY AND FOR THE REASONS SET OUT ABOVE, THE BOARD FOUND THAT HEAD NURSES ARE NOT INCLUDED IN BARGAINING UNIT #2.).

2190-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL #247 (APPLICANT) V. MEADOWBROOK GARDENS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

2222-72-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) V. JAMESWAY CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES, SERVICE AND OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (32 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT OFFICE STAFF INCLUDES PLANT CLERICAL AND TECHNICAL STAFF.).

[1972] 2 OLRB M.R. - PAGE 825.

2241-72-R: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 210, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. RICHMOND NURSING HOMES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AMHERSTBURG EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT REGISTERED NURSES, GRADUATE NURSES, OCCUPATIONAL THERAPISTS, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR MORE THAN 24 HOURS PER WEEK." (17 EMPLOYEES IN THE UNIT).

2312-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. KITCHENER MEMORIAL AUDITORIUM BOARD OF MANAGEMENT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (209 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES.).

2365-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. METROPOLITAN TORONTO ZOOLOGICAL SOCIETY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (15 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSION OF THE PARTIES.). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT; A) EMPLOYEES OF THE ZOO FUND AND PROJECT ARE NOT INCLUDED IN THE BARGAINING UNIT, AND B) THAT THE SECRETARY TO THE ZOO DIRECTOR IS NOT INCLUDED IN THE BARGAINING UNIT. 4. THE BOARD NOTES THE AGREEMENT OF THE PARTIES BEFORE THE EXAMINER THAT; A) THE SECRETARY TO THE FINANCIAL MANAGER IS EXCLUDED FROM THE BARGAINING UNIT BECAUSE THAT PERSON IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS, AND B) THAT BIOLOGISTS ARE INCLUDED IN THE BARGAINING UNIT.).

2380-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. SUTHERLAND-SCHULTZ LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WATERLOO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2388-72-R: RESTAURANT, CAFETERIA & TAVERN EMPLOYEES' UNION LOCAL 254, OF THE HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION (APPLICANT) V. BEAVER FOOD SERVICE ASSOCIATES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS OPERATIONS AT GLENDON CAMPUS, YORK UNIVERSITY IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, NON-WORKING SUPERVISORS, CHEFS, MANAGEMENT TRAINEES, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

2391-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. BAILEY METAL PRODUCTS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF." (16 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2410-72-R: LOCAL 787 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPREN-

TICES OF THE PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) V. GRINNELL FIRE PROTECTION SYSTEMS CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND ENGINEERING STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (13 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES.).

2418-72-R: OPTICAL AND PLASTIC TECHNICIANS AND ALLIED WORKERS UNION LOCAL 67 AFFILIATED WITH THE UNITED HAT, CAP AND MILLINERY WORKERS INTERNATIONAL UNION C.L.C., A.F.L., C.I.O. (APPLICANT) V. KELVIN CONTACT LENSES (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

2419-72-R: OPTICAL AND PLASTIC TECHNICIANS AND ALLIED WORKERS UNION LOCAL 67 AFFILIATED WITH THE UNITED HAT, CAP AND MILLINERY WORKERS INTERNATIONAL UNION C.L.C., A.F.L., C.I.O. (APPLICANT) V. IMPERIAL OPTICAL COMPANY LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL LABORATORY EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS PRESCRIPTION LABORATORY AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS LICENSED BY THE GOVERNMENT OF ONTARIO AS OPHTHALMIC DISPENSER AND EMPLOYED IN THAT CAPACITY, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (26 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2420-72-R: DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A. F. L. - C. I. O., C. L. C. (APPLICANT) V. NIAGARA STRUCTURAL STEEL COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WHO ARE STRUCTURAL DRAFTSMEN EMPLOYED IN ITS DRAWING OFFICES AT ST. CATHARINES, SAVE AND EXCEPT SQUAD LEADERS AND PERSONS ABOVE THE RANK OF SQUAD LEADER, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS OR IN A CO-OPERATIVE TRAINING PROGRAM AND EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL 7012." (15 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES.).

2422-72-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) V. OTTAWA CIVIL SERVICE RECREATIONAL ASSOCIATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA ENGAGED IN CATERING, BEVERAGE AND CLEANING OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (63 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES.).

2443-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. MODERN EXCAVATORS LIMITED (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (14 EMPLOYEES IN THE UNIT).

2453-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE REGIONAL MUNICIPALITY OF YORK (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS HOME FOR THE AGED IN THE REGIONAL MUNICIPALITY OF YORK, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND CLERICAL STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (85 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES.).

2458-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2679 (APPLICANT) V. REFF PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS MANUFACTURING PLANTS IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, HEAD SHIPPER, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (98 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES.).

2464-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. KUZMAS CONSTRUCTION CO. LTD. (RESPONDENT) V. READY-MIX BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL 230, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERA-

TION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

2465-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. JOHN DONOFRIO CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2466-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. SURETY CONST. CO. LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

2467-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. POOLE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2473-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. EASTERN CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

2478-72-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL 124, OTTAWA, HULL (APPLICATION) V. FOAM APPLICATORS INC. (1971) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, ENGAGED IN THE INSTALLATION AND APPLICATION OF RIGID INSULATION, SAVE

AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

2480-72-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 124 (APPLICANT) V. KEN BURNSIDE DRYWALL (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

2481-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. PERWIN CONSTRUCTION CO. LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2484-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ALGOMA HEALTH UNIT (RESPONDENT) V. NURSES' ASSOCIATION ALGOMA HEALTH UNIT (INTERVENER).

UNIT: "ALL CLERICAL EMPLOYEES, PUBLIC HEALTH INSPECTORS, DENTAL ASSISTANTS, HYGIENISTS AND REGISTERED NURSING ASSISTANTS OF THE RESPONDENT IN THE DISTRICT OF ALGOMA, SAVE AND EXCEPT SECRETARY TO THE MEDICAL OFFICER OF HEALTH AND BUSINESS ADMINISTRATOR, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE NURSES' ASSOCIATION ALGOMA HEALTH UNIT." (22 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES.).

2487-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA L.U. 93 (APPLICANT) V. SHOK BETON INC. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2498-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. DOU-RAY EXCAVATING & SEWER LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND

SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

2491-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WEST BEND OF CANADA (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT BARRIE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SECRETARY TO THE PRESIDENT, SALESMEN, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE APPLICANT." (12 EMPLOYEES IN THE UNIT).

2505-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. HEADWAY CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS OF THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2509-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. WISEMAN AND THOMPSON GENERAL CONTRACTORS (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

2511-72-R: TOBACCO WORKERS INTERNATIONAL UNION (APPLICANT) V. MILLS APPLIANCE PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMALEA SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (24 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES.).

2528-72-R: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES, LOCAL 352 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. HARRISON - PEACOCK LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT COBOURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

2553-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. ANGELLOTTI CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

2565-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. CANADIAN BECHTEL LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

2568-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. POOLE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WATERLOO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2578-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. GALWAY REALTY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

APPLICATION CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

2254-72-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. WESTON BAKERIES LIMITED (RESPONDENT) V. BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE STAFF, PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS, AND ALLIED EMPLOYEES LOCAL 647, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED

DURING THE SCHOOL VACATION PERIOD." (275 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		273
NUMBER OF PERSONS WHO CAST BALLOTS	273	
NUMBER OF SPOILED BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	143	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	126	

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

1990-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. FRONTENAC-LENNOX AND ADDINGTON COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT #2: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT ASSISTANT ADMINISTRATOR AND PERSONS ABOVE THE RANK OF ASSISTANT ADMINISTRATOR." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		7
NUMBER OF PERSONS WHO CAST BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

2077-72-R: NURSES' ASSOCIATION HOTEL DIEU OF ST JOSEPH (APPLICANT) V. THE RELIGIOUS HOSPITALERS OF HOTEL DIEU OF ST. JOSEPH OF THE DIOCESE OF LONDON (RESPONDENT).

UNIT: "ALL LAY REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT WINDSOR IN A NURSING CAPACITY, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE." (272 EMPLOYEES IN THE UNIT). (THE BOARD FURTHER STATED IN PARAGRAPH 4 OF ITS DECISION DATED JULY 6TH, 1972: FOR THE PURPOSE OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE HEALTH NURSE, CLINICAL CO-ORDINATOR, ADMITTING OFFICERS AND ALL EMPLOYEES EMPLOYED AT THE VILLA MARIE HOME FOR THE AGED AT WINDSOR ARE EXCLUDED FROM THE BARGAINING UNIT.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	224
NUMBER OF PERSONS WHO CAST BALLOTS	113
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	110
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3

2215-72-R: BRANTFORD TYPOGRAPHICAL UNION LOCAL 378 (ITU CLC) (APPLICANT) V. PRESTON AND SONS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES IN THE PROOF ROOM OF THE RESPONDENT AT BRANTFORD ENGAGED IN PROOF READING FUNCTIONS, SAVE AND EXCEPT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1

APPLICATIONS FOR CERTIFICATION DISMISSED DURING SEPTEMBER

NO VOTE CONDUCTED

1154-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. LEEDS RICHARDSON CO. LTD. (RESPONDENT). (5 EMPLOYEES).

2026-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247 (APPLICANT) V. ADMIRAL ENGINEERING AND CONSTRUCTION LIMITED (RESPONDENT). (NO EMPLOYEES).

2029-72-R: THE PRESCOTT AND RUSSELL PRINTING LIMITED EMPLOYEES' ASSOCIATION (APPLICANT) V. PRESCOTT AND RUSSELL PRINTING LIMITED (RESPONDENT). (22 EMPLOYEES).

2035-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 249 KINGSTON ONTARIO (APPLICANT) V. ADMIRAL ENGINEERING AND CONSTRUCTION LTD. (RESPONDENT). (2 EMPLOYEES).

2166-72-R: UNITED PAPERWORKERS INTERNATIONAL UNION, (UPIU) AFL-CIO & CLC (APPLICANT) V. CAMERON PACKAGING INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN EAST GWILLIMBURY SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (46 EMPLOYEES IN THE UNIT).

2258-72-R: TORONTO PRINTING PRESSMEN & ASSISTANTS' UNION LOCAL 20 (APPLICANT) V. WELLER PUBLISHING CO., LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (5 EMPLOYEES).

2445-72-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. BOARD OF HOSPITAL TRUSTEES OF THE CITY OF LONDON (RESPONDENT). (314 EMPLOYEES).

2550-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. DUFFERIN MATERIALS AND CONSTRUCTION LTD. (RESPONDENT). (12 EMPLOYEES).

2561-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. SIMCOE MECHANICAL CONTRACTING LTD. (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

1567-71-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. STERLING PACKERS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	15
NUMBER OF PERSONS WHO CAST BALLOTS	15
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	15

1984-72-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) V. TILLOTSON PLASTICS INDUSTRIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (43 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	27
NUMBER OF PERSONS WHO CAST BALLOTS	22
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	9
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	13

2089-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. ANGELO BENOTTO AND ELFIO BENOTTO CARRYING ON BUSINESS AS BENOTTO MODEL & PATTERN (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	8
NUMBER OF PERSONS WHO CAST BALLOTS	8
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	5

2150-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1081 (APPLICANT) V. ZORGE CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS' IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF DUFFERIN INCLUDING THE TOWN OF ORANGEVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	3

2246-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. FOUNDATION GENERAL ENGINEERING CONSTRUCTION A DIVISION OF THE FOUNDATION COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AS INSTRUMENT MEN, RODMEN, CHAINMEN AND PARTY CHIEF IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT FIELD ENGINEERS, AND PERSONS ABOVE THE RANK OF FIELD ENGINEER." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	2

2364-72-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, & HELPERS OF AMERICA (APPLICANT) V. CANADIAN MOTOR INDUSTRIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	18
NUMBER OF PERSONS WHO CAST BALLOTS	18
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	10

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING SEPTEMBER

1361-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. DELLELCE CONSTRUCTION AND EQUIPMENT (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #1) V. READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS TEAMSTERS LOCAL UNION NO. 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER #2). (20 EMPLOYEES).

1400-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. DELLELCE CONSTRUCTION AND EQUIPMENT (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER). (20 EMPLOYEES).

2218-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. WALL ROC PLASTERING COMPANY LIMITED (RESPONDENT). (2 EMPLOYEES).

2402-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE MODERN BUILDING CLEANING (RESPONDENT). (3 EMPLOYEES).

2489-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. GLOBE ENVELOPES PRODUCTS LIMITED (RESPONDENT). (20 EMPLOYEES).

2499-72-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. FRANK E. DEMPSEY & SONS LTD. (RESPONDENT). (3 EMPLOYEES).

2504-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. HEADWAY BUILDERS (SAULT) LIMITED (RESPONDENT). (2 EMPLOYEES).

2510-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL #493 (APPLICANT) V. BOT CONSTRUCTION (CANADA) LIMITED (RESPONDENT). (18 EMPLOYEES).

2523-72-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2466 (APPLICANT) V. RAYMOND CARRIERE CONSTRUCTION LTD. (RESPONDENT). (3 EMPLOYEES).

2525-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. FRED BARBINI LIMITED (RESPONDENT). (2 EMPLOYEES).

2526-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL ORNAMENTAL IRON WORKERS, LOCAL #700 (APPLICANT) V. CROSS CANADA EQUIPMENT (RESPONDENT). (3 EMPLOYEES).

2551-72-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. DISPOSAL SERVICES COMPANY LIMITED (RESPONDENT). (176 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING SEPTEMBER

2091-72-R: GROUP OF EMPLOYEES, THE RUNGE PRESS LIMITED (APPLICANT) V. LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 224 (RESPONDENT) V. THE RUNGE PRESS LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL PRINTING TRADE WORKERS OF THE RUNGE PRESS LIMITED AT OTTAWA, SAVE AND EXCEPT GENERAL FOREMEN, PERSONS ABOVE THE RANK OF GENERAL FOREMAN, MAINTENANCE EMPLOYEES AND OFFICE STAFF." (63 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	56
NUMBER OF PERSONS WHO CAST BALLOTS	51
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	24
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	27

2266-72-R: MR. WILLIAM CHEVELDEYOFF (APPLICANT) V. CHRISTIAN TRADE UNIONS OF CANADA, CONSTRUCTION WORKERS LOCAL 6 (RESPONDENT) V. ADDISON ELECTRIC (HAMILTON) LTD. (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF ADDISON ELECTRIC (HAMILTON) LTD. EMPLOYED AT AND WORKING OUT OF HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND SALES AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	5

2292-72-R: OTIS W. CARTER EMPLOYEE OF MISSISSAUGA HOSPITAL ENGINEERING DEPT. (APPLICANT) V. CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 (RESPONDENT) V. THE MISSISSAUGA HOSPITAL (INTERVENER). (DISMISSED).

UNIT: "ALL STATIONARY ENGINEERS EMPLOYED IN THE BOILER ROOM OF THE HOSPITAL AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS, SAVE AND EXCEPT THE CHIEF ENGINEER." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	9
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	7
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	2

2425-72-R: AUTO-PALLETS-BOXES, ONTARIO LTD. (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT). (16 EMPLOYEES). (GRANTED).

2438-72-R: EMPLOYEES OF AMBASSADOR HOTEL (APPLICANTS) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION LOCAL 579 (RESPONDENT). (6 EMPLOYEES). (DISMISSED).

2442-72-R: CORPORATION OF THE COUNTY OF PEEL (PEEL MANOR) (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT). (3 EMPLOYEES). (GRANTED).

2454-72-R: VERES WIRE INDUSTRY LTD. (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT). (60 EMPLOYEES). (GRANTED).

2560-72-R: BOB KANARY (APPLICANT) V. ONTARIO PROVINCIAL DISTRICT COUNCIL, L.I.U.N.A. ON BEHALF OF OIL & GAS BURNER TECHNICIANS UNION, LOCAL 1267 (RESPONDENT) V. ALROS PRODUCTS LIMITED (INTERVENER). (8 EMPLOYEES). (WITHDRAWN).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURINGSEPTEMBER

2259-72-R: LOCAL 787 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) V. THE CANADIAN AUTOMATIC SPRINKLER ASSOCIATION (RESPONDENT). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURINGSEPTEMBER

1603-71-U: THE COUNCIL OF PRINTING INDUSTRIES OF CANADA AND PHOTO ENGRAVERS AND ELECTROTYPERS LIMITED (APPLICANTS) V. KATHERINE ACKERMAN, ET AL. (RESPONDENTS). (WITHDRAWN).

1918-72-U: W. H. DODD CONSTRUCTION CO. LTD. (APPLICANT) V. TORONTO BUILDING AND CONSTRUCTION TRADES COUNCIL AND C. BALLENTINE (RESPONDENTS). (WITHDRAWN).

2280-72-U: FOUNDATION GENERAL ENGINEERING CONSTRUCTION (DIVISION OF THE FOUNDATION COMPANY OF CANADA LIMITED) (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 AND BERNARD F. McMILLAN (RESPONDENTS). (WITHDRAWN).

2282-72-U: THE BORDEN COMPANY LIMITED (TORONTO DIVISION) (APPLICANT) V. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (WITHDRAWN).

2286-72-U: THE BORDEN COMPANY LIMITED (TORONTO DIVISION) (APPLICANT) V. ALAN PARKER, GEORGE BUTT, RAYMOND MACMILLAN, WALTER HAWES, EDWARD JORDAN, JOHN SMITH, WILLIAM MCGILL, WILLIAM SENIOR, CHARLES DOIDGE, J. KENNEDY, AND A. DANIELS (RESPONDENTS). (WITHDRAWN).

2426-72-U: FREELANCE ERECTORS LIMITED (APPLICANT) V. PATRICK DOYLE AND INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION NO. 700 (RESPONDENTS) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL BY AND ON BEHALF OF LOCAL UNIONS 506 AND 625 (INTERVENER). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 818.

2476-72-U: THE WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION, LOCAL 145 (APPLICANT) V. JOHN E. SMITH & SON (1968) LIMITED, EASTERN CONSTRUCTION COMPANY LIMITED AND CADILLAC DEVELOPMENT CORPORATION LIMITED (RESPONDENTS) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18 (INTERVENER). (DISMISSED).

2540-72-U: CANADIAN BUILDING MATERIALS COMPANY, WOODBRIDGE, ONTARIO (APPLICANT) V. PIERRE BEAULAC AND OTHERS NAMED ON THE ATTACHED LIST (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING SEPTEMBER

1048-71-U: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. DELLELCE CONSTRUCTION & EQUIPMENT, DELL CONSTRUCTION (SUDBURY), NICK DELLELCE, BORIS M. MIHELCHIC, UNITED STEELWORKERS OF AMERICA, ALBERT DESBIENS (RESPONDENTS). (WITHDRAWN).

2028-72-U: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. EMPIRE BENTWOOD INDUSTRIES LIMITED (RESPONDENT). (WITHDRAWN).

2154-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES - C.L.C. ONTARIO HYDRO EMPLOYEES' UNION LOCAL 1000 (APPLICANT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT). (GRANTED).

2283-72-U: THE BORDEN COMPANY LIMITED (TORONTO DIVISION) (APPLICANT) V. RONALD MARRIOT (RESPONDENT). (WITHDRAWN).

2295-72-U: LOCAL 173, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA (APPLICANT) V. DARE FOODS (BISCUIT DIVISION) LIMITED, DARE FOODS LIMITED AND WILLIAM M. THOM (RESPONDENTS). (GRANTED).

2296-72-U: PRINTING SPECIALTIES & PAPER PRODUCTS UNION LOCAL 466 (APPLICANT) V. DRUMMOND BUSINESS FORMS LIMITED (RESPONDENT). (GRANTED).

2319-72-U: THE BORDEN COMPANY LIMITED (TORONTO DIVISION) (APPLICANT) V. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (WITHDRAWN).

2369-72-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 120 (APPLICANT) V. FREEMAN ELECTRIC LIMITED (RESPONDENT). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 822.

2433-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. HYDE PARK NURSING HOME LIMITED (RESPONDENT). (WITHDRAWN).

2457-72-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. GERARD CONSTRUCTION (ONTARIO) LTD. (RESPONDENT). (DISMISSED).

2461-72-U: WALTER GUPPY (APPLICANT) V. ALLEN SKYERS (RESPONDENT). (WITHDRAWN).

2468-72-U: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. DU PONT OF CANADA LIMITED AND GEORGE ALLAN COCKSFIELD (RESPONDENTS). (WITHDRAWN).

2541-72-U: CANADA BUILDING MATERIALS COMPANY, WOODBRIDGE, ONTARIO (APPLICANT) V. PIERRE BEAULAC AND OTHERS NAMED ON THE ATTACHED LIST (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)

DISPOSED OF DURING SEPTEMBER

1217-71-U: CANADIAN TEXTILE AND CHEMICAL UNION (COMPLAINANT) V. PURE-TEX KNITTING CO. LTD. (RESPONDENT). (DISMISSED).

1499-71-U: JOHN BOURGEOIS (COMPLAINANT) V. LOCAL 721, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS (RESPONDENT). (GRANTED).

1881-72-U: TORONTO UNION OF TAXI EMPLOYEES, LOCAL 1666, C.L.C. (COMPLAINANT) V. DIMARCO TAXI LTD. (RESPONDENT). (DISMISSED).

1942-72-U: C. TSANOS (COMPLAINANT) V. CONSOLIDATED MAINTENANCE SERVICES LIMITED (RESPONDENT). (WITHDRAWN).

2061-72-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. SCREEN PRINT DISPLAY ADVERTISING LIMITED (RESPONDENT). (DISMISSED).

2126-72-U: CANADIAN UNION OF OPERATING ENGINEERS (COMPLAINANT) V. CANADA GLAZED PAPERS LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER). (DISMISSED).

2181-72-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. LORENZO NADEAU (RESPONDENT). (WITHDRAWN).

2252-72-U: FRANK SIDNEY PARRILL (COMPLAINANT) V. GENERAL TRUCK DRIVERS' UNION, LOCAL 938 (RESPONDENT) V. DIRECT WINTERS TRANSPORT LIMITED (INTERVENER). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 840.

2256-72-U: HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 280 (COMPLAINANT) V. CEDARBRAE HOTELS & HOMES LTD., CARRYING ON BUSINESS AS THE THUNDERBIRD MOTOR HOTEL (RESPONDENT). (WITHDRAWN).

2281-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. ST. JOSEPH'S VILLA (RESPONDENT). (WITHDRAWN).

2284-72-U: INTERNATIONAL BROTHERHOOD OF POTTERY AND ALLIED WORKERS (COMPLAINANT) V. BLUE MOUNTAIN POTTERY (RESPONDENT). (WITHDRAWN).

2381-72-U: NURSES' ASSOCIATION OF LAKEHEAD REGIONAL SCHOOL OF NURSING (COMPLAINANT) V. LAKEHEAD REGIONAL SCHOOL OF NURSING (RESPONDENT). (WITHDRAWN).

2384-72-U: JOHN M. LUSSIER (COMPLAINANT) V. LOCAL 46, THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (RESPONDENT). (WITHDRAWN).

2387-72-U: EDWARD STEVEN CURRIE (COMPLAINANT) V. LOCAL 46, THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (RESPONDENT). (WITHDRAWN).

2406-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. HYDE PARK NURSING HOME LIMITED (RESPONDENT). (WITHDRAWN).

2430-72-U: ROGER MILETTE (COMPLAINANT) V. INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE & PAPER MILL WORKERS, LOCAL 289 (RESPONDENT). (WITHDRAWN).

2434-72-U: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (COMPLAINANT) V. MILLER PAVING LIMITED (RESPONDENT). (WITHDRAWN).

2435-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. HYDE PARK NURSING HOME LIMITED (RESPONDENT). (WITHDRAWN).

2436-72-U: NICHOLAS E. ERDELYI (COMPLAINANT) V. THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS - LOCAL LODGE #2330 (RESPONDENT). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 844.

2456-72-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. EMPIRE PUBLIC HOUSE (RESPONDENT). (WITHDRAWN).

2486-72-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. RAYBESTOS-MANHATTAN (CANADA) LIMITED (RESPONDENT). (WITHDRAWN).

2508-72-U: WALTER GUPPY (COMPLAINANT) V. ALLEN SKYERS (RESPONDENT). (WITHDRAWN).

2538-72-U: DAVID HASTINGS (COMPLAINANT) V. BILTMORE HATS LIMITED (RESPONDENT). (WITHDRAWN).

2547-72-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. LAST MINUTE MANUFACTURING CO. LTD. (RESPONDENT). (WITHDRAWN).

APPLICATION UNDER SECTION 55 (FORMERLY S. 47A) DISPOSED OF DURINGSEPTEMBER

2116-72-R: THE UNITED GARMENT WORKERS OF AMERICA, LOCAL 253 (APPLICANT) V. OUTDOOR OUTFITS LIMITED AND ABBEY CREST COMPANY (RESPONDENTS). (DISMISSED).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))DISPOSED OF DURING SEPTEMBER

1612-71-M: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LIVINGSTON TRANSPORTATION LIMITED (RESPONDENT).

2082-72-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 129 (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF PICKERING (RESPONDENT).

2191-72-M: THE GLOBE AND MAIL (APPLICANT) V. THE TORONTO NEWSPAPER GUILD, LOCAL 87 (RESPONDENT). (DISMISSED).

2320-72-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1393 (APPLICANT) V. UNIVERSITY OF WINDSOR (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

1893-72-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. CANADA GLAZED PAPERS LIMITED (RESPONDENT) V. PRINTING SPECIALTIES & PAPER PRODUCTS UNION, LOCAL 466 (INTERVENER #1) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER #2). (REQUEST DENIED).

2090-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. KELSEY-HAYES CANADA LIMITED (RESPONDENT). (REQUEST DENIED).

2299-72-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LIN-CRAFT LIMITED (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 73(2)(FORMERLY S.60(2)) (CONTINUATION OF LOCALS UNDER TRUSTEESHIP)

56-71-T: IN THE MATTER OF A REQUEST BY THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA FOR CONSENT TO CONTINUE SUPERVISION OVER ITS LOCAL UNION No. 93 (REQUEST DENIED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - JURISDICTIONAL
DISPUTE

1411-71-JD: NORTHDOWN DRYWALL & CONSTRUCTION LIMITED (COMPLAINANT) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18; THE WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 562; ROBERTSON-YATES CORPORATION LIMITED (RESPONDENTS). (REQUEST DENIED).

2172-72-JD: INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS UNION, LOCAL 89 (COMPLAINANT) v. SPRUCE FALLS POWER AND PAPER COMPANY LIMITED (RESPONDENT). (REQUEST DENIED).

[1972] 2 OLRB M.R. - PAGE 836.

STATISTICAL TABLES FOR FIRST SIX MONTHS (APRIL - SEPTEMBER) OF
FISCAL YEAR 1972-73

TABLE I

APPLICATIONS AND COMPLAINTS RECEIVED BY THE ONTARIO LABOUR
RELATIONS BOARD

	NUMBER FILED		
	2ND QUARTER' FISCAL YEAR 1972-73	1ST 6 MONTHS FISCAL YEAR	
		1972-73	1971-72
I. CERTIFICATION	265	536	499
II. DECLARATION TERMINATING BARGAINING RIGHTS	21	31	43
III. DECLARATION OF SUCCESSOR STATUS	3	12	12
IV. DECLARATION THAT STRIKE UNLAWFUL	14	26	29
V. DECLARATION THAT LOCK-OUT UNLAWFUL	-	1	1
VI. CONSENT TO PROSECUTE	23	52	129
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 79) (FORMERLY SECTION 65)	58	102	94
VIII. MISCELLANEOUS	<u>36</u>	<u>66</u>	<u>62</u>
TOTAL	420 <u> </u>	826 <u> </u>	869 <u> </u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	2ND QUARTER FISCAL YEAR 1972-73	1ST 6 MONTHS FISCAL YEAR	
		1972-73	1971-72
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	279	561	491

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR
RELATIONS BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	2ND QUARTER	1ST 6 MONTHS FISCAL YEAR	
	FISCAL YEAR 1972-73	1972-73	1971-72
I. CERTIFICATION	257	505	448
II. DECLARATION TERMINATING BARGAINING RIGHTS	19	28	38
III. DECLARATION OF SUCCESSOR STATUS	10	11	6
IV. DECLARATION THAT STRIKE UNLAWFUL	13	22	30
V. DECLARATION THAT LOCK-OUT UNLAWFUL	-	-	2
VI. CONSENT TO PROSECUTE	29	60	120
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 79) (FORMERLY SECTION 65)	51	119	78
VIII. MISCELLANEOUS	<u>22</u>	<u>68</u>	<u>61</u>
TOTAL	401	813	783
	<u>==</u>	<u>==</u>	<u>==</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	2ND QUARTER	1ST 6 MTHS F.Y.		2ND QUARTER	1ST 6 MTHS F.Y.	
	FISCAL YEAR	FISCAL YEAR		FISCAL YEAR	FISCAL YEAR	
	1972-73	1972-73	1971-72	1972-73	1972-73	1971-72
I. <u>CERTIFICATION</u>						
GRANTED	173	338	274	4429	9245	7844
DISMISSED	54	113	139	2698	6170	6170
WITHDRAWN	<u>30</u>	<u>54</u>	<u>35</u>	<u>750</u>	<u>1399</u>	<u>677</u>
TOTAL	257	505	448	7877	16814	14691
	==	==	==	==	==	==
II. <u>TERMINATION</u>						
<u>OF BARGAINING</u>						
<u>RIGHTS</u>						
GRANTED	11	17	19	279	424	1923
DISMISSED	5	7	13	14	32	303
WITHDRAWN	<u>3</u>	<u>4</u>	<u>6</u>	<u>64</u>	<u>64</u>	<u>345</u>
TOTAL	19	28	38	357	520	2571
	==	==	==	==	==	==

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS		
		2ND QUARTER	1ST 6 MONTHS FISCAL YEAR	
		FISCAL YEAR		
		1972-73	1972-73	1971-72
<u>III. DECLARATION THAT STRIKE</u>				
<u>UNLAWFUL</u>				
1	GRANTED	2	4	7
	DISMISSED	2	5	4
	WITHDRAWN	<u>9</u>	<u>13</u>	<u>21</u>
	TOTAL	13	22	32
		=	=	=
<u>IV. DECLARATION THAT LOCKOUT</u>				
<u>UNLAWFUL</u>				
		-	-	-
		-	-	2
		-	-	-
		TOTAL	-	2
		=	=	=
<u>V. CONSENT TO PROSECUTE</u>				
		6	13	23
		3	5	62
		<u>20</u>	<u>42</u>	<u>35</u>
		TOTAL	29	120
		=	=	=
<u>VI. COMPLAINT OF UNFAIR</u>				
<u>PRACTICE IN EMPLOYMENT</u>				
<u>(SECTION 79) (FORMERLY</u>				
<u>SECTION 65)</u>				
		2	6	12
		18	44	21
		<u>31</u>	<u>69</u>	<u>45</u>
		TOTAL	51	78
		=	=	=

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	2ND QUARTER	1ST 6 MONTHS FISCAL YEAR	
	FISCAL YEAR 1972-73	1972-73	1971-72
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	7	18	19
POST-HEARING VOTE	12	26	27
BALLOTS NOT COUNTED	2	2	-
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	7	18	21
POST-HEARING VOTE	18	33	30
BALLOTS NOT COUNTED	<u>1</u>	<u>2</u>	<u>1</u>
 TOTAL	47	99	98
	=	=	=

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICANTS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	2ND QUARTER	1ST 6 MONTHS FISCAL YEAR	
	FISCAL YEAR 1972-73	1972-73	1971-72
*RESPONDENT UNION SUCCESSFUL	-	-	1
RESPONDENT UNION UNSUCCESSFUL	<u>6</u>	<u>9</u>	<u>14</u>
 TOTAL	6	9	15
	=	=	=

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

2) OLRB REP.

PAGES 846-922

OCTOBER

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054



ONTARIO

Monthly Report

ONTARIO, LABOUR RELATIONS BOARD,

ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1972] OLRB REP.

CASES REPORTED

BARTENDERS & WAITERS U.L. 280 & EL MOCAMBO TAVERNE RE WILLIAM STOUTLEY.....	862
BRANDON GENERAL CONTRACTORS LTD. AND K. W. BUILDING & CONSTRUCTION TRADES COUNCIL; LEN DUNKEL; BRIAN STRICKLAND; WILLIAM COLLIER; I.B.E.W., L. 804; & JOHN CHAPE.....	900
CRUIKSHANK, ROBERT, CLEANING CONTRACTORS LTD. RE S.E.I.U. L. 183 AFF'L WITH S.E.I.U., A.F. OF L., C.I.O., C.L.C. AND GROUP OF EMPLOYEES.....	882
CRUIKSHANK, ROBERT, CLEANING CONTRACTORS LTD. RE S.E.I.U. L. 183 AFF'L WITH S.E.I.U., A.F. OF L., C.I.O., C.L.C. AND GROUP OF EMPLOYEES.....	891
ENTWISTLE, JOHN, CONSTRUCTION LTD. AND C.J.A. L. 1758.....	919
FORD MOTOR CO. OF CANADA, LTD. RE MANSFIELD MATHIAS.....	921
GLENCOE NURSING HOME RE RONALD ANDERSON, EMERTEEN HURLEY, MARGARET CUSHMAN, LOIS LAUGHY, VIRGINIA BRAITHWAITE, HELEN OSBORNE RE LONDON & DISTRICT BUILDING SERVICE WORKERS' U., L. 220.....	877
HARROW MASONRY RE CHATHAM CONSTRUCTION WORKERS ASSOCIATION, L. No. 53, AFF'L WITH THE C.L.A.C.....	909
HEERINGA, HENDRIK W., AND C.U.P.E., C.L.C., ONT. HYDRO EMPLOYEES' U., L. 1000 AND THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO.....	904
HOWDEN, JAMES, & PARSONS OF CANADA, LTD. RE A.F.T.E., L. 164.....	850
HYDRO ELECTRIC POWER COMMISSION OF ONT. RE C.U.O.E. AND C.U.P.E. - C.L.C., ONT. HYDRO EMPLOYEES' U. L. 1000.....	920
IMPERIAL TOBACCO PRODUCTS (ONT.) LTD. RE C.U.O.E. AND T.W.I.U., L. 323.....	868
I.W.A. L. 2-700 RE ALFRED COMPTON.....	916
LIVINGSTON TRANSPORTATION LTD. RE I.W.A.....	881
MENARD, J. R., LTD. RE T.C.W.H., L. 91 AFF'L WITH THE T.C.W.H. AND GROUP OF EMPLOYEES.....	915
ROSEN, MICHAEL, REAL ESTATE LTD. RE O.P.E.I.U.....	871

ST. JOSEPH, OF SISTERS, OF THE DIOCESE OF LONDON, IN ONT. RE ASSOCIATION OF NURSES, ST. JOSEPH'S HOSPITAL, LONDON.....	846
SPIVAK, N. J., LTD. RE RODERIC E. McDONALD.....	864
SPRUCELEIGH FARMS, A DIVISION OF CANADA PACKERS LTD. RE AMALGA- MATED MEAT CUTTERS & BUTCHER WORKMEN OF N. AMERICA A.F.L., C.I.O., C.L.C.....	860
SWING STAGE LTD. RE B.S.O.I.W., L.U. 721 AND O.P.C.M., L.U. 172.....	878
TORONTO WESTERN HOSPITAL RE C.U.G.E.....	851
WELLAND COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD RE C.U.P.E. AND EMPLOYEE.....	884
WELLER PUBLISHING CO. LTD. RE TORONTO PRINTING PRESSMEN & ASSISTANTS U. L. 10.....	875
WILLIAMS MACHINES LTD. RE W.T.T.F.M.P. WORKERS ASSOCIATION AND I.M.A.W.....	879

INDEX OF CASES

AGRICULTURE - JURISDICTION - EMPLOYER RAISING CHICKENS TO PRODUCE EGGS - TRUCK DRIVERS DELIVERING EGGS TO HATCHERY AND PERSONS EMPLOYED IN HATCHERY - WHETHER EMPLOYED IN HATCHERY.	
AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA A.F.L., C.I.O., C.L.C. v. SPRUCELEIGH FARMS, A DIVISION OF CANADA PACKERS LIMITED.....	860
BARGAINING RIGHTS - CONCILIATION - S96 - WHETHER A COLLECTIVE AGREEMENT RENEWED ITSELF FROM YEAR TO YEAR FOR A PERIOD OF ELEVEN YEARS - WHETHER AN ABANDONMENT OF BARGAINING RIGHTS.	
JOHN ENTWISTLE CONSTRUCTION LIMITED v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1758.....	919
BARGAINING UNIT - CONSTRUCTION INDUSTRY - S6(2) - WHETHER EVI- DENCE THAT A TRADE UNION HAS AN ESTABLISHED PRACTICE THAT "PERTAINS" TO THE CONSTRUCTION INDUSTRY FOR PURPOSES OF S106(F) MAY BE APPLIED FOR PURPOSES OF ESTABLISHING A PAST PRACTICE "PERTAINING" TO A CRAFT FOR PURPOSES OF S6(2) - WHETHER THE BOARD TO CONSTRUE THE WORD "PERTAINS" ON A WIDE BASIS - EFFECT OF SUCH AN INTERPRETATION OUTLINED -	

WHETHER THE APPROPRIATE UNIT IS ON ALL EMPLOYEE UNIT UNDER S6(1).

CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53,
AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA
V. HARROW MASONRY.....

909

BARGAINING UNIT - PART TIME UNIT - WHETHER STUDENTS EMPLOYED
DURING THE SCHOOL VACATION PERIOD TO BE EXCLUDED - EFFECT
OF AGREEMENT OF THE PARTIES - WHETHER THE BOARD TO BE
BOUND BY THE AGREEMENT.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 183
AFFILIATED WITH S.E.I.U., A.F. OF L., C.I.O., C.L.C. V.
ROBERT CRUIKSHANK CLEANING CONTRACTORS LTD. V. GROUP OF
EMPLOYEES.....

882

CERTIFICATION - PRACTICE - S8(2) - EFFECT OF FILING EVIDENCE OF
MEMBERSHIP AFTER THE APPLICATION DATE ON A PRE-HEARING VOTE
APPLICATION - WHETHER BOARD WILL PERMIT A PARTY TO CHANGE A
PRE-HEARING VOTE APPLICATION TO A REGULAR APPLICATION -
DIFFERENCES BETWEEN THE PROCEDURES OF THE TWO APPLICATIONS
EXPLAINED - WHETHER TO PERMIT CHANGE OPERATES TO THE PRE-
JUDICE OF PERSONS AFFECTED BY THE APPLICATION-AFFECT OF
S53(2) OF THE L.R.A.

CANADIAN UNION OF OPERATING ENGINEERS V. IMPERIAL TOBACCO
PRODUCTS (ONTARIO) LIMITED V. TOBACCO WORKERS INTERNATIONAL
UNION, LOCAL 323.....

868

COLLECTIVE AGREEMENT - TERMINATION - S7(6) OF HOSPITAL LABOUR
DISPUTES ARBITRATION ACT - EFFECT OF AN ORDER MADE BY A
BOARD OF ARBITRATION UNDER ABOVE PROVISION - S49(2) -
WHETHER APPLICATION FOR TERMINATION WITHIN LAST TWO MONTHS
OF EXPIRY OF A COLLECTIVE AGREEMENT.

RONALD ANDERSON, EMERTEEN HURLEY, MARGARET CUSHMAN, LOIS
LAUGHY, VIRGINIA BRAITHWAITE, HELEN OSBORNE V. LONDON AND
DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220.....

877

CONCILIATION - BARGAINING RIGHTS - S96 - WHETHER A COLLECTIVE
AGREEMENT RENEWED ITSELF FROM YEAR TO YEAR FOR A PERIOD
OF ELEVEN YEARS - WHETHER AN ABANDONMENT OF BARGAINING
RIGHTS.

JOHN ENTWISTLE CONSTRUCTION LIMITED V. UNITED BROTHERHOOD
OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1758.....

919

CONSENT TO PROSECUTE - HOSPITAL LABOUR DISPUTES ARBITRATION ACT -
 WHETHER BOARD WILL EXERCISE ITS DISCRETION - EMPLOYEES ON AN
 ILLEGAL STRIKE - WHETHER EMPLOYER FAILING TO BARGAIN IN GOOD
 FAITH - WHETHER GRANTING OF CONSENT WILL CONTRIBUTE TO RESTOR-
 ATION OF PROPER RELATIONSHIP BETWEEN THE PARTIES OR ENCOURAGE
 PRACTICE AND PROCEDURES OF ORDINARY COLLECTIVE BARGAINING -
 WHETHER DISPUTE PROLONGED.

CANADIAN UNION OF GENERAL EMPLOYEES v. TORONTO WESTERN HOSPI-
 TAL.....

851

CONSTRUCTION INDUSTRY - BARGAINING UNIT - S6(2) - WHETHER EVI-
 DENCE THAT A TRADE UNION HAS AN ESTABLISHED PRACTICE THAT
 "PERTAINS" TO THE CONSTRUCTION INDUSTRY FOR PURPOSES OF
 S106(F) MAY BE APPLIED FOR PURPOSES OF ESTABLISHING A PAST
 PRACTICE "PERTAINING" TO A CRAFT FOR PURPOSES OF S6(2) -
 WHETHER THE BOARD TO CONSTRUE THE WORD "PERTAINS" ON A
 WIDE BASIS - EFFECT OF SUCH AN INTERPRETATION OUTLINED -
 WHETHER THE APPROPRIATE UNIT IS ON ALL EMPLOYEE UNIT UNDER
 S6(1).

CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53,
 AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA
 v. HARROW MASONRY.....

909

EMPLOYEE - DETERMINING THE EMPLOYER - CRITERIA THE BOARD APPLIES -
 WHETHER CONSISTENT WITH JUDICIAL UTTERANCES - WHETHER AN
 ARRANGEMENT WHEREBY THE EMPLOYER PURPORTS TO TRANSFER ITS
 EMPLOYEES TO ANOTHER EMPLOYER ALTERED THE SUBSTANCE OF THE
 EMPLOYER-EMPLOYEE RELATIONSHIP.

CANADIAN UNION OF PUBLIC EMPLOYEES v. THE WELLAND COUNTY
 ROMAN CATHOLIC SEPARATE SCHOOL BOARD v. EMPLOYEE.....

884

EVIDENCE - TRADE UNION - STATUS - BOARD GRANTING STATUS -
 WHETHER EMPLOYER CAN ATTACK STATUS IN SUBSEQUENT APPLICA-
 TION - EFFECT OF SECTION 94 - WHETHER PRIMA FACIE EVIDENCE
 IN SUBSEQUENT PROCEEDING - DISTINCTION BETWEEN ATTACK BY
 STRANGER AND PARTY PRESENT AT PREVIOUS PROCEEDING -
 DOCTRINE OF RES JUDICATA - WHETHER TRADE UNION IN FACT
 SAME ORGANIZATION AS TRADE UNION WHICH HOLDS BARGAINING
 RIGHTS - WHETHER BOARD WILL GRANT A CERTIFICATE.

ASSOCIATION OF NURSES ST. JOSEPH'S HOSPITAL, LONDON v.
 THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON, IN
 ONTARIO.....

846

FAIR REPRESENTATION - S79 - MEMBER NOT BEING ADVISED OF RIGHT
OF APPEAL TO MEMBERSHIP WITH RESPECT TO A GRIEVANCE -
WHETHER UNION ARBITRARY WITHIN MEANING OF ACT.

WILLIAM STOUTLEY v. BARTENDERS & WAITERS UNION LOCAL 280
AND EL MOCAMBO TAVERNE..... 86

FAIR REPRESENTATION - S79 - S60 - ORIGINS OF THE SECTION OUTLINED
- WHETHER UNION REPRESENTATIVE IN TREATING AN EMPLOYEE'S
GRIEVANCE IN A PERFUNCTORY MANNER ACTED IN AN ARBITRARY
MANNER FOR PURPOSES OF S60 - EFFECT OF ALLOWING TIME LIMITS
FOR FILING A GRIEVANCE TO LAPSE-PROCEDURE - WHETHER ISSUES
OF LIABILITY AND DAMAGES TO BE HEARD TOGETHER OR APART.

ALFRED COMPTON v. INTERNATIONAL WOODWORKERS OF AMERICA
LOCAL 1-700..... 91

JURISDICTION - AGRICULTURE - EMPLOYER RAISING CHICKENS TO PRODUCE
EGGS - TRUCK DRIVERS DELIVERING EGGS TO HATCHERY AND PERSONS
EMPLOYED IN HATCHERY - WHETHER EMPLOYED IN HATCHERY.

AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA
A.F.L., C.I.O., C.L.C. v. SPRUCELEIGH FARMS, A DIVISION OF
CANADA PACKERS LIMITED..... 86

JURISDICTION - S95 - WHETHER DECLARATORY - WHETHER CONFERS RIGHT
TO MAKE AN APPLICATION.

AMERICAN FEDERATION OF TECHNICAL ENGINEERS, LOCAL 164 v.
JAMES HOWDEN & PARSONS OF CANADA, LIMITED..... 85

MEMBERSHIP - CERTIFICATES OF MEMBERSHIP - EFFECT OF FAILURE OF
PROPER CERTIFICATION OF A RESPONSIBLE UNION OFFICER.

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNA-
MENTAL IRONWORKERS, LOCAL UNION 721 v. SWING STAGE LIMITED
v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL
ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION NO.
172..... 87

MEMBERSHIP - S1(1)(J) - EFFECT TO FAILURE OF EVIDENCE OF MEMBER-
SHIP TO INDICATE COLLECTOR AND ABSENCE OF RECEIPTS INDICATING
THAT DOLLAR HAD BEEN PAID - EFFECT OF NON-DISCLOSURE ON FORM
8.

W.T.T.F.M.P. WORKERS ASSOCIATION v. WILLIAMS MACHINES LIMITED
v. INTERNATIONAL MOLDERS & ALLIED WORKERS UNION..... 87

MEMBERSHIP - S1(1)(J) - WHETHER RETURN OF \$1.00 IN THE CIRCUMSTANCES AMOUNTED TO A NON-PAY - WHETHER NON-PAY CAST DOUBT ON BALANCE OF EVIDENCE OF MEMBERSHIP - FORM 8 - WHETHER NON-DISCLOSURE IN THE CIRCUMSTANCES COULD BE CONSTRUED AS AN ATTEMPT TO MISLEAD THE BOARD.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 183 AFFILIATED WITH S.E.I.U., A.F. OF L., C.I.O., C.L.C. v. ROBERT CRUIKSHANK CLEANING CONTRACTORS LIMITED v. GROUP OF EMPLOYEES.....

891

PRACTICE - CERTIFICATION - S8(2) - EFFECT OF FILING EVIDENCE OF MEMBERSHIP AFTER THE APPLICATION DATE ON A PRE-HEARING VOTE APPLICATION - WHETHER BOARD WILL PERMIT A PARTY TO CHANGE A PRE-HEARING VOTE APPLICATION TO A REGULAR APPLICATION - DIFFERENCES BETWEEN THE PROCEDURES OF THE TWO APPLICATIONS EXPLAINED - WHETHER TO PERMIT CHANGE OPERATES TO THE PRE-JUDICE OF PERSONS AFFECTED BY THE APPLICATION-EFFECT OF S53(2) OF THE L.R.A.

CANADIAN UNION OF OPERATING ENGINEERS v. IMPERIAL TOBACCO PRODUCTS (ONTARIO) LIMITED v. TOBACCO WORKERS INTERNATIONAL UNION, LOCAL 323.....

868

PRACTICE - CHALLENGE TO RULINGS OF AN EXAMINER - WHETHER QUESTIONS PUT IN CROSS-EXAMINATION PROPER.

INTERNATIONAL WOODWORKERS OF AMERICA v. LIVINGSTON TRANSPORTATION LIMITED.....

881

PRACTICE - WHETHER THE BOARD WILL ACCEDE TO THE REQUEST OF A PARTY TO REVOKE THE APPOINTMENT OF AN EXAMINER FOR REASONS THAT EVIDENCE IN ANOTHER CASE COULD BE APPLIED TO THE CASE UNDER CONSIDERATION.

CANADIAN UNION OF OPERATING ENGINEERS v. THE HYDRO ELECTRIC POWER COMMISSION OF ONTARIO v. CANADIAN UNION OF PUBLIC EMPLOYEES - C.L.C., ONTARIO HYDRO EMPLOYEES' UNION LOCAL 1000.....

920

RELIGIOUS OBJECTION - TIMELINESS - S39(2) - EFFECT OF APPLICATION BEING MADE AT A TIME WHEN THERE WAS NO COLLECTIVE AGREEMENT IN OPERATION - WHETHER APPLICATION MADE AT A TIME WHEN EMPLOYER AND EMPLOYEES ARE IN A LEGAL STRIKE - LOCK-OUT CIRCUMSTANCE MAY BE DEEMED TIMELY - EFFECT OF EMPLOYER CONTINUING TO DEDUCT CHECK-OFF DUES AT A TIME WHEN THE COLLECTIVE AGREEMENT HAS CEASED TO OPERATE.

HENDRIK W. HEERINGA v. CANADIAN UNION OF PUBLIC EMPLOYEES, C.L.C., ONTARIO HYDRO EMPLOYEES' UNION, LOCAL 1000 v. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO.....

904

REPRESENTATION VOTE - SCRUTINEERS - POLICY OF THE BOARD - WHETHER CHOICE OF SCRUTINEER MAY IMPROPERLY AFFECT THE TRUE WISHES OF EMPLOYEES IN THE REPRESENTATION VOTE.

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. J. R.
MENARD LTD. v. GROUP OF EMPLOYEES..... 915

S79 - DISCHARGE - S58(A) - WHETHER FOR TRADE UNION ACTIVITY -
EFFECT OF COMPLAINANT ENGAGING IN CONFLICTS OF INTEREST
WITH RESPONDENT - WHETHER KNOWLEDGE BY RESPONDENT OF
ORGANIZATIONAL CAMPAIGN PREJUDICIAL-EFFECT OF COMPLAINANT
MERELY EXECUTING MEMBERSHIP CARD IN TRADE UNION - WHETHER
INITIAL ONUS SATISFIED.

OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION v. MIC-
HAEL ROSEN REAL ESTATE LIMITED..... 871

S79 - DISCHARGE - S58(A)(C) - WHETHER DISCHARGE ACCELERATED BY
KNOWLEDGE OF COMPLAINANT'S TRADE UNION ACTIVITY.

TORONTO PRINTING PRESSMEN & ASSISTANTS UNION LOCAL 10 v.
WELLER PUBLISHING COMPANY LIMITED..... 875

S79 - FAIR REPRESENTATION - MEMBER NOT BEING ADVISED OF RIGHT
OF APPEAL TO MEMBERSHIP WITH RESPECT TO A GRIEVANCE -
WHETHER UNION ARBITRARY WITHIN MEANING OF ACT.

WILLIAM STOUTLEY v. BARTENDERS & WAITERS UNION LOCAL 280
AND EL MOCAMBO TAVERNE..... 862

S79 - FAIR REPRESENTATION - S60 - ORIGINS OF THE SECTION OUTLINED
- WHETHER UNION REPRESENTATIVE IN TREATING AN EMPLOYEE'S
GRIEVANCE IN A PERFUNCTORY MANNER ACTED IN AN ARBITRARY
MANNER FOR PURPOSES OF S60 - EFFECT OF ALLOWING TIME LIMITS
FOR FILING A GRIEVANCE TO LAPSE-PROCEDURE - WHETHER ISSUES
OF LIABILITY AND DAMAGES TO BE HEARD TOGETHER OR APART.

ALFRED COMPTON v. INTERNATIONAL WOODWORKERS OF AMERICA
LOCAL 2-700..... 916

S79 - WHETHER DISCHARGE FOR UNION ACTIVITY - S58(A) - EFFECT OF
DISCHARGE TAKING PLACE SOMETIME AFTER THE HOLDING OF A REP-
RESENTATION VOTE - RELEVANCE OF POOR ATTENDANCE RECORD IN
DETERMINING WHETHER DISCHARGE FOR UNION ACTIVITY.

RODERIC E. McDONALD v. N. J. SPIVAK LIMITED..... 864

TERMINATION - COLLECTIVE AGREEMENT - S7(6) OF HOSPITAL LABOUR
DISPUTES ARBITRATION ACT - EFFECT OF AN ORDER MADE BY A
BOARD OF ARBITRATION UNDER ABOVE PROVISION - S49(2) -
WHETHER APPLICATION FOR TERMINATION WITHIN LAST TWO MONTHS
OF EXPIRY OF A COLLECTIVE AGREEMENT.

RONALD ANDERSON, EMERTEEN HURLEY, MARGARET CUSHMAN, LOIS
LAUGHY, VIRGINIA BRAITHWAITE, HELEN OSBORNE v. LONDON AND
DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220.....

877

TRADE UNION - EVIDENCE - STATUS - BOARD GRANTING STATUS -
WHETHER EMPLOYER CAN ATTACK STATUS IN SUBSEQUENT APPLICA-
TION - EFFECT OF SECTION 94 - WHETHER PRIMA FACIE EVIDENCE
IN SUBSEQUENT PROCEEDING - DISTINCTION BETWEEN ATTACK BY
STRANGER AND PARTY PRESENT AT PREVIOUS PROCEEDINGS -
DOCTRINE OF RES JUDICATA - WHETHER TRADE UNION IN FACT
SAME ORGANIZATION AS TRADE UNION WHICH HOLDS BARGAINING
RIGHTS - WHETHER BOARD WILL GRANT A CERTIFICATE.

ASSOCIATION OF NURSES ST. JOSEPH'S HOSPITAL, LONDON v.
THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON, IN
ONTARIO.....

846

UNLAWFUL LOCK-OUT - S83 - WHETHER SUSPENSION FOR REFUSAL BY
EMPLOYEE TO OPEN HIS LUNCH BOX WHEN SO INSTRUCTED IS A
"LOCK-OUT" WITHIN THE MEANING OF S1(1)(1).

MANSFIELD MATHIAS v. FORD MOTOR COMPANY OF CANADA,
LIMITED.....

921

UNLAWFUL STRIKE - S123 - WHETHER A GENERAL CONTRACTOR AN "IN-
TERESTED PERSON" FOR PURPOSES OF FILING AN APPLICATION -
WHETHER REFUSAL OF EMPLOYEES OF EMPLOYER SUB-CONTRACTORS
TO CROSS A PICKET LINE DURING THE SUBSISTENCE OF A COL-
LECTIVE AGREEMENT AN UNLAWFUL STRIKE - S1(1)(M) - S63 -
WHETHER STRIKE INITIATED WITH A VIEW TO INDUCE A GENERAL
CONTRACTOR NOT TO ENGAGE NON-UNION SUB-CONTRACTORS EN-
COURAGEMENT AND SUPPORT OF AN UNLAWFUL STRIKE - S88(2)
- WHETHER TRADE UNION RESPONSIBLE FOR ACTIVITIES OF ITS
OFFICIALS.

BRANDON GENERAL CONTRACTORS LTD. v. K. W. BUILDING AND
CONSTRUCTION TRADES COUNCIL; LEN DUNKEL; BRIAN STRICK-
LAND; WILLIAM COLLIER; INTERNATIONAL BROTHERHOOD OF ELEC-
TRICAL WORKERS, LOCAL 804; AND JOHN CHAPE.....

900

2. THE COMPLAINANT WAS FIRED IN JANUARY OF 1972. DURING THE MONTH OF DECEMBER HE HAD BEEN SUSPENDED FOUR TIMES AND HAD FILED GRIEVANCES IN CONNECTION WITH EACH SUSPENSION. THE RESPONDENT'S POSITION IS THAT THESE GRIEVANCES WERE PROPERLY PROCESSED BY THE RESPONDENT'S LOCAL SHOP COMMITTEE AND WERE STILL IN THE GRIEVANCE PROCEDURE WHEN THE COMPLAINANT WAS FINALLY DISMISSED ON JANUARY 7, 1972. THE COMPLAINANT THEN LODGED A GRIEVANCE IN CONNECTION WITH HIS DISMISSAL. THE RESPONDENT UNION THEN DISCUSSED THE LAST GRIEVANCE WITH THE EMPLOYER AND REQUESTED THE REASONS FOR THE DISMISSAL AND ALSO A COPY OF THE COMPLAINANT'S WORK RECORD. THIS RECORD INDICATES THAT BETWEEN AUGUST 22, 1969 UP TO THE DATE OF HIS DISMISSAL, THE COMPLAINANT HAD BEEN DISCIPLINED ON 20 OCCASIONS, 16 OF WHICH WERE FOR INSUBORDINATION. THE DISCIPLINE INVOKED VERGED FROM VERBAL WARNINGS, THROUGH WRITTEN WARNINGS TO SUSPENSIONS. THE DISMISSAL RESULTED FROM AN ALLEGED ACT OF INSUBORDINATION.

3. A REPRESENTATIVE OF THE RESPONDENT MET WITH THE COMPLAINANT TO DISCUSS THE DISMISSAL AND SO BE IN A POSITION TO MAKE A RECOMMENDATION TO THE MEMBERSHIP OF THE UNION ON THE DISPOSITION OF THE VARIOUS GRIEVANCES. PRIOR TO THIS MEETING THE REPRESENTATIVE ARRANGED FOR THE COMPANY TO REINSTATE THE COMPLAINANT PROVIDED THE REPRESENTATIVE COULD PERSUADE THE COMPLAINANT TO AGREE TO FOLLOW INSTRUCTIONS IN THE FUTURE AND TO DO AS HE WAS ORDERED WITH THE RIGHT TO GRIEVE AFTERWARDS IF HE FELT THE ORDER WAS UNJUST. THE COMPLAINANT REFUSED TO GIVE ANY SUCH ASSURANCE AND STATED HE WANTED HIS GRIEVANCE TO GO TO ARBITRATION. HE WAS INFORMED BY THE REPRESENTATIVE THAT THAT DECISION WOULD BE A DECISION OF THE MEMBERSHIP, FOLLOWING A RECOMMENDATION OF THE LOCAL SHOP COMMITTEE. THE COMPLAINANT WAS INFORMED OF THE TIME AND PLACE OF THE NEXT REGULAR LOCAL LODGE MEETING. THE COMPLAINANT WAS ALSO INFORMED THAT IF THE MEMBERSHIP DECIDED NOT TO PROCEED TO ARBITRATION, THE COMPLAINANT WOULD HAVE THE RIGHT TO PROCEED WITH THE GRIEVANCE BUT AT HIS OWN EXPENSE.

4. AT THE LOCAL LODGE MEETING HELD ON JANUARY 23, 1972, THE SHOP COMMITTEE RECOMMENDATION WAS THAT THE UNION DID NOT HAVE A SUFFICIENT CASE TO PROCEED TO ARBITRATION. THERE WAS DISCUSSION ON THIS QUESTION AND THE MEMBERSHIP BY SECRET BALLOT VOTE UPHELD THE RECOMMENDATION OF THE SHOP COMMITTEE BY A VOTE OF 26 TO 7. THE COMPLAINANT DID NOT ATTEND THE MEETING, ALTHOUGH HE WAS INVITED TO DO SO.

5. AFTER CAREFULLY CONSIDERING THE ABOVE FACTS, AS WELL AS THE STATEMENT OF THE COMPLAINANT GIVEN TO THE FIELD OFFICER, WE ARE UNABLE TO FIND ANYTHING WHICH SUGGESTS THAT THE RESPONDENT HAS ACTED IN A MANNER THAT WAS ARBITRARY, DISCRIMINATORY, OR IN BAD FAITH IN THE REPRESENTATION OF THE COMPLAINANT. AS NOTED ABOVE, THE COMPLAINANT SUGGESTS THAT HE HAS NOT BEEN REPRESENTED ADEQUATELY BY THE RESPONDENT. THAT, HOWEVER, IS NOT THE QUESTION WITH WHICH THE BOARD MUST CONCERN ITSELF. SECTION 60 OF THE LABOUR RELATIONS ACT SPEAKS OF ARBITRARINESS, DISCRIMINATION AND BAD FAITH. CLEARLY THERE IS NOTHING BEFORE US WHICH WOULD SUGGEST THAT THE UNION OR ITS REPRESENTATIVES ACTED IN BAD FAITH.

NOR IS THERE ANYTHING FROM WHICH WE COULD INFER THAT THE UNION ACTED IN A DISCRIMINATORY MANNER TOWARDS THE COMPLAINANT. THUS THERE IS NO SUGGESTION THAT ANOTHER UNION MEMBER'S CASE IN A SIMILAR POSITION WOULD HAVE BEEN DEALT WITH DIFFERENTLY. FINALLY, WE ARE UNABLE TO FIND ANYTHING IN THE MATERIAL BEFORE US WHICH WOULD LEAD TO AN INFERENCE OF ARBITRARINESS. THE DECISION ARRIVED AT WAS MADE AFTER A REPRESENTATIVE OF THE RESPONDENT DISCUSSED THE MATTER WITH THE EMPLOYER AND IN FACT NEGOTIATED A SETTLEMENT. THE COMPLAINANT REFUSED TO ACCEPT THIS SETTLEMENT. THE LOCAL SHOP COMMITTEE THEN PUT THE MATTER BEFORE THE MEMBERSHIP OF THE UNION. THE COMPLAINANT WAS ENTITLED TO BE PRESENT AT THE MEETING AND TO STATE HIS CASE. HE CHOSE NOT TO DO SO. THE DECISION WAS MADE ON THE BASIS OF A SECRET BALLOT AND ONLY AFTER DISCUSSIONS BY THE UNION MEMBERSHIP. THERE IS NO SUGGESTION OF ARBITRARINESS ANYWHERE IN THIS PROCEDURE OR IN THE WAY THE FINAL DECISION WAS MADE.

6. HAVING REGARD TO THE ABOVE MATTERS, WE ARE OF THE OPINION THAT THIS IS NOT A CASE WHICH SHOULD BE DEALT WITH BY MEANS OF A FORMAL HEARING BY THE BOARD. THERE IS NOTHING BEFORE US WHICH WOULD SUGGEST THAT SECTION 60 OF THE ACT HAS BEEN VIOLATED BY THE RESPONDENT IN ANY WAY.

7. IN THE RESULT, THEREFORE, THIS COMPLAINT IS DISMISSED.

8. IN THE EVENT THAT THE COMPLAINANT IS OF THE VIEW THAT THE BOARD HAS ERRED IN A MATERIAL RESPECT, IT IS OPEN TO THE COMPLAINANT TO REQUEST THE BOARD TO RECONSIDER ITS DECISION, PURSUANT TO THE PROVISIONS OF SECTION 95(1) OF THE LABOUR RELATIONS ACT.

2118-72-R: ASSOCIATION OF NURSES ST. JOSEPH'S HOSPITAL, LONDON (APPLICANT) V. THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON, IN ONTARIO (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F.W. MURRAY.

APPEARANCES AT THE HEARING: D.F.O. HERSEY, M.A. O'CONNOR AND DIANNE HEINISCH FOR THE APPLICANT; O.W. DURDIN, Q.C. AND JOSEPH RYAN FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 6, 1972.

1. THE NAME "THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON IN ONTARIO OPERATING ST. JOSEPH'S HOSPITAL AT LONDON, ONTARIO" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON, IN ONTARIO".

2. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE STATUS OF THE APPLICANT, AS A TRADE UNION, WAS ATTACKED BY THE EMPLOYER. IN

DEFENCE OF ITS POSITION THE APPLICANT HAS THE BENEFIT OF SECTION 94 OF THE LABOUR RELATIONS ACT AS THE RESULT OF AN EARLIER APPLICATION TO THIS BOARD CONCERNING THESE SAME TWO PARTIES WHEREIN THE BOARD GRANTED TRADE UNION STATUS TO THE APPLICANT; SEE [1972] OLRB REP. 661. SECTION 94 PROVIDES:

94. WHERE IN ANY PROCEEDING UNDER THIS ACT THE BOARD HAS FOUND OR FINDS THAT AN ORGANIZATION OF EMPLOYEES IS A TRADE UNION WITHIN THE MEANING OF CLAUSE N OF SUBSECTION 1 OF SECTION 1, SUCH FINDING IS PRIMA FACIE EVIDENCE IN ANY SUBSEQUENT PROCEEDING UNDER THIS ACT THAT THE ORGANIZATION OF EMPLOYEES IS A TRADE UNION FOR THE PURPOSES OF THIS ACT.

THE EARLIER FINDING BY THIS BOARD IS THUS PRIMA FACIE EVIDENCE OF THE APPLICANT'S STATUS AS A TRADE UNION.

3. THE CLEAR ISSUE RAISED IS WHETHER THE RESPONDENT EMPLOYER WHICH CONTESTED THE STATUS OF THE APPLICANT IN THE PREVIOUS PROCEEDING CAN NOW RAISE THE SAME ISSUE IN A SUBSEQUENT PROCEEDING. WHILE IT IS TRUE THAT THE ACT BY TREATING A PREVIOUS FINDING AS PRIMA FACIE EVIDENCE SUGGESTS THAT THE FINDING IS OPEN TO ATTACK IN A SUBSEQUENT PROCEEDING, WE ARE OF THE OPINION THAT SOME DISTINCTION MUST BE MADE BETWEEN AN ATTACK ON STATUS BY A PARTY WHO WAS A STRANGER TO THE PREVIOUS PROCEEDING AND A PARTY WHO WAS PRESENT AT THE PREVIOUS PROCEEDING WHERE THE ISSUE OF STATUS WAS DETERMINED AND HAD THE OPPORTUNITY TO CONTEST THAT ISSUE. IT IS IN THE LATTER SITUATION THAT THE WELL KNOWN PRINCIPLE OF RES JUDICATA APPLIES.

4. THE MAXIM RES JUDICATA IS CONCERNED WITH THE DOCTRINE OF ESTOPPEL - A STATEMENT OF THE PRINCIPLE AND ITS EFFECT HAS BEEN EXPRESSED BY THE HOUSE OF LORDS IN CARL-ZEISS-STIFTUNG V. RAYNER & KEELER, LTD. (No. 2), [1966] 2 All E.R. 536, H.L., PER LORD GUEST, AT PP. 564, 565, AS FOLLOWS:

"THE DOCTRINE OF ESTOPPEL PER REM JUDICATAM IS REFLECTED IN TWO LATIN MAXIMS, (I) INTEREST REI PUBLICAE UT SIT FINIS LITII AND (II) NEMO DEBET BIS VEXARI PRO UNA ET EADEM CAUSA. THE FORMER IS PUBLIC POLICY AND THE LATTER IS PRIVATE JUSTICE. THE RULE OF ESTOPPEL BY RES JUDICATA, WHICH IS A RULE OF EVIDENCE, IS THAT WHERE A FINAL DECISION HAS BEEN PRONOUNCED BY A JUDICIAL TRIBUNAL OF COMPETENT JURISDICTION OVER THE PARTIES TO AND THE SUBJECT-MATTER OF THE LITIGATION, ANY PARTY OR PRIVY IS ESTOPPED IN ANY SUBSEQUENT LITIGATION FROM

DISPUTING OR QUESTIONING SUCH DECISION ON THE MERITS. AS ORIGINALLY CATEGORISED, RES JUDICATA WAS KNOWN AS 'ESTOPPEL BY RECORD'. BUT AS IT IS NOW QUITE IMMATERIAL WHETHER THE JUDICIAL DECISION IS PRONOUNCED BY A TRIBUNAL WHICH IS REQUIRED TO KEEP A WRITTEN RECORD OF ITS DECISIONS, THIS NOMENCLATURE HAS DISAPPEARED AND IT MAY BE CONVENIENT TO DESCRIBE RES JUDICATA IN ITS TRUE AND ORIGINAL FORM AS 'CAUSE OF ACTION ESTOPPEL'. THIS HAS LONG BEEN RECOGNISED AS OPERATING AS A COMPLETE BAR IF THE NECESSARY CONDITIONS ARE PRESENT. WITHIN RECENT YEARS THE PRINCIPLE HAS DEVELOPED SO AS TO EXTEND TO WHAT IS NOW DESCRIBED AS 'ISSUE ESTOPPEL', THAT IS TO SAY WHERE IN A JUDICIAL DECISION BETWEEN THE SAME PARTIES SOME ISSUE WHICH WAS IN CONTROVERSY BETWEEN THE PARTIES AND WAS INCIDENTAL TO THE MAIN DECISION HAS BEEN DECIDED, THEN THAT MAY CREATE AN ESTOPPEL PER REM JUDICATAM."

SIMILARLY, IN EDWARDS V. EDWARDS, [1967] 2 All E.R. 1032, PER SIR JOCELYN SIMON, P., SAID AT P. 1033:

"ALL ADJUDICATION, LIKE EVERY PIECE OF SOCIAL ENGINEERING, IS A COMPROMISE BETWEEN A NUMBER OF DESIDERATA, NOT ALL OF WHICH ARE EASILY MADE CONSISTENT. THERE SHOULD, FIRST, BE THE FULLEST AND TRUEST ASSESSMENT OF ALL RELEVANT FACTS. THERE MUST, HOWEVER, SECONDLY, BE SOME PROTECTION OF INDIVIDUAL PRIVACY AND LIBERTY. THIRDLY, AND MOST RELEVANT OF ALL TO THIS APPLICATION, IT IS DESIRABLE THAT DISPUTES WITHIN SOCIETY SHOULD BE BROUGHT TO AN END AS SOON AS IS REASONABLY PRACTICAL AND SHOULD NOT BE ALLOWED TO DRAG FESTERINGLY ON FOR AN INDEFINITE PERIOD. THAT LAST PRINCIPLE FINDS EXPRESSION IN A MAXIM WHICH ENGLISH LAW TOOK OVER FROM THE ROMAN LAW IT IS IN THE PUBLIC INTEREST THAT THERE SHOULD BE SOME END TO LITIGATION. THE PRINCIPLE, FOR EXAMPLE, APPLIES IN THE DOCTRINE WHICH IS KNOWN TO LAWYERS AS RES JUDICATA; IN OTHER WORDS, ONCE THERE IS A DECISION ON A MATTER BY A COMPETENT COURT, IT IS BINDING ON ALL COURTS OF SIMILAR JURISDICTION."

5. IN OUR VIEW AND AFTER CONSIDERING SECTION 95 AND THE CONCEPT OF RES JUDICATA AND THE SUBMISSIONS BY THE RESPONDENT THAT THE EVIDENCE PRESENTED TO US WAS MERELY AN EXTENSION OR ELABORATION OF SOME OF THE EVIDENCE PRESENTED AT THE FIRST HEARING - AND THAT THE RESPONDENT HAD THE OPPORTUNITY TO PRESENT SUCH EVIDENCE AT THE FIRST HEARING, WE ARE NOT PREPARED TO GIVE WEIGHT TO THE RESPONDENT'S EVIDENCE CONCERNING THE STATUS ISSUE FOR THE PURPOSE OF OVERTURNING THE EARLIER DECISION OF THIS BOARD. WE THEREFORE ACCEPT THE PREVIOUS FINDING AS PRIMA FACIE EVIDENCE THAT THE APPLICANT IS A TRADE UNION FOR THE PURPOSES OF THE ACT.

6. THE SECOND ISSUE RAISED AND ONE WHICH GIVES US SOME CONCERN IS THE NATURE AND PURPOSE OF THE APPLICATION. THE MEMBERS OF THE APPLICANT WERE PREVIOUSLY MEMBERS OF ANOTHER TRADE UNION KNOWN AS THE NURSES ASSOCIATION ST. JOSEPH'S HOSPITAL, LONDON, ONTARIO, WHICH WAS CERTIFIED BY THIS BOARD ON SEPTEMBER 17, 1968, AND WHICH HAD ENTERED INTO COLLECTIVE AGREEMENTS WITH THE RESPONDENT. IT HAD NEGOTIATED WITH THE RESPONDENT AND THE PARTIES SUBSEQUENTLY WENT ON TO ARBITRATION AS PROVIDED UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. IT APPEARS THAT THE RESULTS OF THE ARBITRATION OR SUBSEQUENT NEGOTIATIONS WERE NOT SATISFACTORY TO THE MEMBERS OF THE ASSOCIATION. WE MAKE NO COMMENT ON THE MERITS OF THAT SITUATION WHICH IS NOT HERE IN ISSUE - BUT APPARENTLY BEING DISSATISFIED WITH THE COURSE OF DEALINGS THE MEMBERSHIP OF THE NURSES ASSOCIATION ST. JOSEPH'S HOSPITAL, LONDON, ONTARIO, DECIDED TO DISBAND AND FORM ANOTHER TRADE UNION IN ANTICIPATION THAT A SUBSEQUENT CERTIFICATION WOULD ALLOW THEM TO START AFRESH AND WOULD AID IN RESOLVING THE AREAS OF DISSATISFACTION.

7. WE ARE GREATLY CONCERNED ABOUT THE COURSE OF EVENTS. IT FOLLOWED IT MIGHT LEAD TO CHAOS; IT MEANS THAT A TRADE UNION DISSATISFIED WITH THE TERMS OF COLLECTIVE BARGAINING COULD SIMPLY DISSOLVE THEREBY VOIDING OR REPUDIATING A COLLECTIVE AGREEMENT TO WHICH IT WAS A PARTY AND THEN HAVE THE MEMBERS RECONSTITUTE THEMSELVES INTO ANOTHER TRADE UNION. WE DO NOT THINK THAT THIS WAS THE INTENT OF THE ACT. THE ACT IS INTENDED TO BRING STABILITY IN LABOUR RELATIONS. IF TRADE UNIONS TECHNICALLY DISSOLVE AND THEN RECONSTITUTE THEMSELVES THE RESULT WILL BE TO CREATE INSTABILITY.

8. WE HAVE ON OTHER OCCASIONS SUGGESTED THAT WE WOULD PIERCE THE CORPORATE VEIL. WE SEE NO REASON WHY IN CERTAIN FACT SITUATIONS TRADE UNIONS OUGHT NOT TO BE SIMILARLY VIEWED AND TREATED. SEE E.G., CLARK DIARY LIMITED, LARK CARTAGE LIMITED [1970] AUGUST OLRB REP. 601. ACCORDINGLY WE DETERMINE THAT ALTHOUGH THE APPLICANT IS A TRADE UNION IT IS IN EFFECT THE SAME ORGANIZATION AS THE NURSES ASSOCIATION ST. JOSEPH'S HOSPITAL, LONDON, ONTARIO, WHICH IS ALSO A TRADE UNION. SINCE THAT ORGANIZATION ALREADY HOLDS BARGAINING RIGHTS NOTHING CAN BE GAINED BY GRANTING A CERTIFICATE. WE MIGHT ADD THAT THE ASSOCIATION OF NURSES ST. JOSEPH'S HOSPITAL, LONDON, ONTARIO, ADVISED THE BOARD IT WAS ABANDONING ITS BARGAINING RIGHTS. IN THESE CIRCUMSTANCES WE ARE NOT PREPARED TO ACCEPT THE REPRESENTATIONS THAT THERE HAS IN FACT BEEN ABANDONMENT. THE APPLICATION IS THEREFORE DISMISSED.

2400-72-M: AMERICAN FEDERATION OF TECHNICAL ENGINEERS, LOCAL 164 (APPLICANT) v. JAMES HOWDEN & PARSONS OF CANADA, LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND P.J. O'KEEFFE.

APPEARANCES AT THE HEARING: JEFFREY SACK AND L.H. ROSEN FOR THE APPLICANT; J.P. BORDEN AND ALLEN JACKSON FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 6, 1972.

1. THIS MATTER WAS BROUGHT TO THIS BOARD BY WAY OF A PURPORTED APPLICATION PURSUANT TO SECTION 95 OF THE LABOUR RELATIONS ACT. IT WAS REQUESTED THAT A DETERMINATION BE MADE THAT THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES TO THIS APPLICATION WAS NOT IN EFFECT AND THAT THE EMPLOYEES WERE NOT BOUND BY IT.

2. PRELIMINARY TO THE BOARD'S DEALING WITH THE ISSUES RAISED, COUNSEL WERE ASKED TO SUBMIT ARGUMENT AS TO WHETHER SECTION 95(1) PERMITTED THE BRINGING OF THIS APPLICATION. THAT SECTION PROVIDES:

"THE BOARD HAS EXCLUSIVE JURISDICTION TO EXERCISE THE POWERS CONFERRED UPON IT BY OR UNDER THIS ACT AND TO DETERMINE ALL QUESTIONS OF FACT OR LAW THAT ARISE IN ANY MATTER BEFORE IT, AND THE ACTION OR DECISION OF THE BOARD THEREON IS FINAL AND CONCLUSIVE FOR ALL PURPOSES, BUT NEVERTHELESS THE BOARD MAY AT ANY TIME, IF IT CONSIDERS IT ADVISABLE TO DO SO, RECONSIDER ANY DECISION, ORDER, DIRECTION, DECLARATION OR RULING MADE BY IT AND VARY OR REVOKE ANY SUCH DECISION, ORDER, DIRECTION, DECLARATION OR RULING."

3. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES, WE ARE OF THE OPINION THAT SECTION 95(1) IS DECLARATORY OF THE BOARD'S JURISDICTION AND ALL THE POWERS IT HAS. SECTION 95(1) ALSO GIVES THE BOARD POWER TO RECONSIDER OR REVIEW THE DETERMINATIONS MADE BY IT. BUT, SECTION 95(1) DOES NOT PERMIT THE BRINGING OF AN APPLICATION. THE PHRASE IN THIS SECTION, "IN ANY MATTER BEFORE IT", IN OUR VIEW REALLY EXPRESSES THE BOARD'S JURISDICTION TO EXERCISE ITS POWERS AND TO DETERMINE QUESTIONS OF FACT AND LAW IN A PROPERLY CONSTITUTED APPLICATION.

4. IN INDUSTRIAL FOOD SERVICES DIVISION OF CANADIAN FOOD PRODUCTS SALES LIMITED 62 CLLC #16228 THE BOARD HAD OCCASION TO DEAL WITH SECTION 79 OF THE LABOUR RELATIONS ACT RSO 1960 c. 202 WHICH WAS THE PREDECESSOR SECTION TO SECTION 95. NOTWITHSTANDING THE CHANGES IN THE WORDING BETWEEN THE THEN SECTION 79 AND SECTION 95 WE ARE OF THE VIEW THAT THE STATEMENT BY THE BOARD THAT NO APPLICATION COULD BE BROUGHT UNDER SECTION 79(1) IS RELEVANT TO SECTION 95. IN THAT CASE THE BOARD STATED:

"THIS BOARD HAS CONSISTENTLY HELD THAT THAT PORTION OF SECTION 79(1) DOWN TO THE WORDS "IS FINAL AND CONCLUSIVE FOR ALL PURPOSES" DOES NOT CONFER ANY RIGHT ON A PERSON OR A TRADE UNION TO COMMENCE A PROCEEDING. THAT RIGHT MUST BE FOUND ELSEWHERE IN THE ACT".

5. AFTER CONSIDERING SECTION 95 AND THE REASONS IN THE CANADIAN FOOD PRODUCTS CASE, WE ARE OF THE OPINION THAT THERE IS NO JURISDICTION UNDER SECTION 95 WHICH PERMITS THE MAKING OF AN APPLICATION AND THESE PROCEEDINGS ARE THEREFORE TERMINATED.

6. HOWEVER, IN ARRIVING AT OUR DECISION WE RECOGNIZE THAT THE PARTIES ARE FACED WITH A LEGITIMATE DISPUTE WHICH THEY HAD SOUGHT TO HAVE THIS BOARD RESOLVE. UNFORTUNATELY, THE TERMS OF THE ACT AND THE PROCEDURE FOLLOWED DO NOT PERMIT US TO RESOLVE THE ISSUE IN DISPUTE BETWEEN THE PARTIES.

19-72-PH: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. TORONTO WESTERN HOSPITAL (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND W. H. WIGHTMAN.

APPEARANCES AT THE HEARING: GEORGE MILLER, L. McLACHLAN AND G. O'BRIAN FOR THE APPLICANT; R. B. POTTER AND D. S. AFFLECK FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER W. H. WIGHTMAN: OCTOBER 10, 1972.

1. THIS IS AN APPLICATION FOR THE CONSENT OF THE ONTARIO LABOUR RELATIONS BOARD TO INSTITUTE A PROSECUTION OF THE RESPONDENT FOR THE ALLEGED VIOLATION OF SECTION 3 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, RSO 1970, CHAP. 208, HEREINAFTER CALLED THE HOSPITAL ACT.

2. THE APPLICANT ORIGINALLY SOUGHT CONSENT TO INSTITUTE PROSECUTION FOR VIOLATION OF SECTIONS 14 AND 6(1) (sic) OF THE LABOUR RELATIONS ACT. AT THE HEARING, COUNSEL FOR THE APPLICANT ADVISED THE BOARD THAT HE WAS NOT PROCEEDING WITH THESE ALLEGATIONS AND THEY ARE ACCORDINGLY HEREBY DISMISSED.

3. SECTION 2 OF THE HOSPITAL ACT PROVIDES:

2. (1) THIS ACT APPLIES TO ANY HOSPITAL EMPLOYEES TO WHOM THE LABOUR RELATIONS ACT APPLIES, TO THE TRADE UNIONS AND COUNCILS OF TRADE UNIONS THAT ACT OR PURPORT TO ACT FOR OR ON BEHALF OF ANY SUCH EMPLOYEES, AND TO THE EMPLOYERS OF SUCH EMPLOYEES.

(2) EXCEPT AS MODIFIED BY THIS ACT, THE LABOUR RELATIONS ACT APPLIES TO ANY HOSPITAL EMPLOYEES TO WHOM THIS ACT APPLIES, TO THE TRADE UNIONS AND COUNCILS OF TRADE UNIONS THAT ACT OR PURPORT TO ACT FOR OR ON BEHALF OF ANY SUCH EMPLOYEES, AND TO THE EMPLOYERS OF SUCH EMPLOYEES.

4. THE PROVISIONS OF SECTION 3 OF THE HOSPITAL ACT WHICH ARE SET OUT BELOW ARE NOT FOUND IN THE LABOUR RELATIONS ACT:

3. WHERE THE MINISTER HAS INFORMED EACH OF THE PARTIES UNDER CLAUSE B OF SECTION 18 OF THE LABOUR RELATIONS ACT THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD, OR WHERE THE REPORT OF A CONCILIATION BOARD APPOINTED UNDER CLAUSE A OF THAT SECTION OR OF A MEDIATOR APPOINTED UNDER SECTION 16 OF THAT ACT HAS BEEN RELEASED BY THE MINISTER TO EACH OF THE PARTIES UNDER SUBSECTION 5 OF SECTION 31 OF THAT ACT, AND IN EITHER CASE A COLLECTIVE AGREEMENT HAS NOT BEEN MADE, THE PARTIES SHALL MEET FORTHWITH AND BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT.

5. SECTION 90 OF THE LABOUR RELATIONS ACT STATES:

90. (1) NO PROSECUTION FOR AN OFFENCE UNDER THIS ACT SHALL BE INSTITUTED EXCEPT WITH THE CONSENT IN WRITING OF THE BOARD.

(2) AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION FOR AN OFFENCE UNDER THIS ACT MAY BE MADE INTER ALIA BY A TRADE UNION, A COUNCIL OF TRADE UNIONS, A CORPORATION OR AN EMPLOYERS' ORGANIZATION, AND, IF THE CONSENT IS GIVEN BY THE BOARD, THE INFORMATION MAY BE LAID INTER ALIA BY ANY OFFICER, OFFICIAL OR MEMBER OF THE TRADE UNION, COUNCIL OF TRADE UNIONS, CORPORATION OR EMPLOYERS' ORGANIZATION.

THE SECTION, OF COURSE, SPEAKS FOR ITSELF AND PLAINLY LEAVES THE LAUNCHING OF A PROSECUTION DEPENDENT UPON THE PERMISSION OF THE BOARD. OBVIOUSLY, THE INTENT OF THE LEGISLATURE IS TO CLOTHE THE BOARD WITH DISCRETIONARY POWERS GOVERNING THE CARRYING OF ALLEGED INDUSTRIAL RELATIONS OFFENCES INTO THE REALM OF THE COURTS.

6. AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION

THEREFORE COMES BEFORE THE BOARD PRIMARILY FOR THE PURPOSE OF ALLOWING THE BOARD TO REVIEW THE CIRCUMSTANCES SURROUNDING THE ALLEGATIONS AND TO WEIGH THE MATTER FROM AN INDUSTRIAL RELATIONS POINT OF VIEW. THIS IS IN ORDER TO ALLOW THE BOARD TO DETERMINE FROM ITS SPECIAL VIEWPOINT, THE VALUE, IF ANY, THAT MIGHT ACCRUE TO THE PARTIES SPECIFICALLY AS WELL AS TO THE PUBLIC GENERALLY IN THE AREA OF INDUSTRIAL RELATIONS BY PERMITTING THE DISPUTE IN QUESTION TO BE DETERMINED ON THE PURELY LEGAL BASIS OF THE GUILT OR INNOCENCE OF AN ACCUSED IN A QUASI-CRIMINAL TRIAL.

7. A PREREQUISITE TO THE CONSIDERATION AND DETERMINATION BY THE BOARD OF THE QUESTION AS TO WHETHER TO GRANT CONSENT TO AN APPLICANT IS THE ESTABLISHMENT BY THE APPLICANT OF A PRIMA FACIE CASE OR OF THE FACT THAT AN ARGUABLE POINT OF LAW IS INVOLVED. IN THE ABSENCE OF THESE ELEMENTS, THE BOARD WILL DISMISS THE APPLICATION. IN THEIR PRESENCE, THE BOARD IS REQUIRED TO EXERCISE THE DISCRETIONARY POWER GIVEN TO IT UNDER THE LEGISLATION AND TO DECIDE WHETHER TO GRANT CONSENT IN THE CIRCUMSTANCES OF THE CASE BEFORE IT.

8. THE APPLICANT AND THE RESPONDENT WERE PARTIES TO A COLLECTIVE AGREEMENT WHICH EXPIRED ON JULY 5, 1972. THE UNION GAVE PROPER NOTICE OF DESIRE TO BARGAIN FOR A NEW COLLECTIVE AGREEMENT AND MEETINGS WERE HELD FOR THAT PURPOSE.

9. ON OR ABOUT JULY 12, 1972, WHILE A BARGAINING SESSION WAS ACTUALLY IN PROGRESS, A SUBSTANTIAL NUMBER OF EMPLOYEES IN THE BARGAINING UNIT, INCLUDING MEMBERS OF THE NEGOTIATING COMMITTEE ENGAGED IN A STRIKE, AN ACTION WHICH IS PROHIBITED BY SECTION 8(1) OF THE HOSPITAL ACT WHICH STATES AS FOLLOWS:

8. (1) NOTWITHSTANDING ANYTHING IN THE LABOUR RELATIONS ACT, NO HOSPITAL EMPLOYEES TO WHOM THIS ACT APPLIES SHALL STRIKE AND NO EMPLOYER OF SUCH EMPLOYEES SHALL LOCK THEM OUT.

10. THE RESPONDENT REFUSED TO CONTINUE TO BARGAIN WITH THE APPLICANT SO LONG AS THE EMPLOYEES CARRIED ON THE ILLEGAL STRIKE.

11. ON OR ABOUT JULY 13, 1972, THE MINISTER ADVISED THE PARTIES THAT HE HAD DECIDED NOT TO APPOINT A BOARD OF CONCILIATION IN THE MATTER.

12. ON JULY 15, 1972, THE RESPONDENT SUSPENDED THE MEMBERS OF THE BARGAINING COMMITTEE FOR ENGAGING IN A STRIKE IN VIOLATION OF THE HOSPITAL ACT AND THE LABOUR RELATIONS ACT.

13. FOLLOWING RECEIPT OF THE LETTER FROM THE MINISTER ADVISING NO BOARD OF CONCILIATION WOULD BE APPOINTED, THERE WAS AN EXCHANGE OF TELEGRAMS, INITIATED BY THE APPLICANT, BETWEEN THE PARTIES. THE APPLICANT ADVISED THE RESPONDENT THAT IT WAS PREPARED TO MEET AND BARGAIN IN GOOD FAITH TO REACH AN AGREEMENT.

14. THE RESPONDENT REPLIED THAT IT WAS PREPARED TO MEET AND BARGAIN IN GOOD FAITH, WHICH HOWEVER, IT INTERPRETED AS REQUIRING COMPLIANCE BY THE UNION WITH SECTION 8(1) OF THE HOSPITAL ACT. IN EFFECT, THE RESPONDENT INDICATED THAT, IN ITS OPINION, THE TERMINATION OF THE ILLEGAL WALKOUT WAS A CONDITION PRECEDENT TO GOOD FAITH BARGAINING.

15. AT THIS POINT IN THE PROCEEDINGS THE APPLICANT BROUGHT THE PRESENT APPLICATION SEEKING CONSENT TO PROSECUTE THE RESPONDENT FOR FAILING TO BARGAIN IN GOOD FAITH. THE APPLICATION IS DATED JULY 17, 1972 AT WHICH TIME THE ILLEGAL STRIKE WAS STILL IN PROGRESS.

16. HAVING IN MIND THE RESPONDENT'S COUNTER-OFFER TO BARGAIN IN GOOD FAITH, CONDITIONAL THOUGH IT WAS UPON THE APPLICANT ENDING ITS ILLEGAL STRIKE, THE BOARD IS OF THE OPINION THAT IT WOULD REQUIRE AN EXTRAORDINARY CONVOLUTION OF THE OBVIOUS MEANING AND INTEND OF SECTION 3 OF THE HOSPITAL ACT TO FIND THAT IT IS THE RESPONDENT THAT IS IN BREACH OF THAT SECTION.

17. THE BOARD NOTWITHSTANDING THE FOREGOING AND ASSUMING BUT WITHOUT SO FINDING THAT THE EVIDENCE OF THE REFUSAL OF THE RESPONDENT TO MEET AND BARGAIN WITH THE UNION WHILE THE LATTER WAS ENGAGED IN AN ILLEGAL STRIKE, DOES CONSTITUTE A PRIMA FACIE CASE OF A VIOLATION OF THE PROVISIONS OF SECTION 3 OF THE HOSPITAL ACT, OR DOES RAISE AN ARGUABLE POINT OF LAW WITH RESPECT THERETO, NOW ADDRESSES ITSELF TO THE QUESTION AS TO WHETHER, IN THE EXERCISE OF ITS DISCRETION IN ALL THE CIRCUMSTANCES OF THE CASE, IT SHOULD ISSUE A CONSENT TO PROSECUTE.

18. THE ADDITIONAL FACTS WHICH ARE PROPER FOR THE BOARD TO TAKE INTO ACCOUNT IN THE QUESTION OF THE EXERCISE OF ITS DISCRETION ARE SET OUT BELOW.

19. THE RESPONDENT ADVISED THE STRIKING EMPLOYEES BY LETTER DATED JULY 24, 1972 THAT UNLESS THEY RETURNED TO WORK NOT LATER THAN THE 26TH DAY OF JULY, 1972, IMMEDIATE DISMISSAL WOULD BE CONSIDERED BY THE HOSPITAL. ON THE 27TH DAY OF JULY, 1972, THE HOSPITAL IN FACT DISCHARGED ALL EMPLOYEES WHO FAILED TO REPORT. SOME 350 EMPLOYEES WERE DISCHARGED.

20. THE PARTIES DID AGREE TO EXTEND THE BARGAINING PERIOD AS PROVIDED FOR UNDER SECTION 4(2) OF THE HOSPITAL ACT. NO AGREEMENT WAS REACHED HOWEVER.

21. THE RESPONDENT THEREUPON NOTIFIED THE MINISTER OF THE NAME OF ITS APPOINTEE TO A BOARD OF ARBITRATION PURSUANT TO THE PROVISIONS OF SECTION 5(1) OF THE HOSPITAL ACT.

22. THE APPLICANT DID NOT APPOINT A NOMINEE AND STATED AT THE HEARING THAT NO APPOINTMENT WOULD BE MADE UNLESS THE DISCHARGED EM-

PLOYEES WHO HAD BEEN DISCHARGED BECAUSE OF THEIR ILLEGAL STRIKE WERE REINSTATED.

23. THE PRESIDENT OF THE APPLICANT TOLD THIS BOARD THAT HE HAD NO INTENTION OF BARGAINING ON BEHALF OF THE EMPLOYEES WHO HAD FAILED TO PARTICIPATE IN THE STRIKE.

24. THE DECISION OF THE BOARD TO GRANT OR TO REFUSE TO GRANT LEAVE TO PROSECUTE IN ANY PARTICULAR CASE DOES NOT TURN STRICTLY UPON THE MERITS OF THE CASE EXCEPT ONLY AS THEY BEAR UPON THE DETERMINATION OF THE INITIAL QUESTION AS TO THE EXISTENCE OF A PRIMA FACIE CASE OR AN ARGUABLE POINT OF LAW. IT IS NOT TO BE CONCLUDED THEREFORE THAT WHERE THE BOARD DENIES CONSENT TO PROSECUTE IT NECESSARILY CONDONES OR WHERE IT GRANTS CONSENT IT NECESSARILY CONDEMNS THE CONDUCT UPON WHICH THE APPLICATION IS BASED.

25. AS ALREADY INDICATED, A FUNDAMENTAL TASK FOR THE BOARD IN THE EXERCISE OF ITS DISCRETION IN APPLICATIONS FOR CONSENT TO PROSECUTE, INVOLVES THE SELECTION OF THE COURSE THAT IS BEST SUITED, IN ITS OPINION, TO PRESERVE OR ADVANCE INDUSTRIAL PEACE, TRANQUILITY AND ORDER IN THE CIRCUMSTANCES IMMEDIATELY BEFORE IT AND IN INDUSTRIAL SOCIETY AT LARGE. THIS IS SURELY THE LOGICAL EXPLANATION AS TO WHY THE LEGISLATION REQUIRES THE FIAT OF THE BOARD IN THESE APPLICATIONS.

26. IN THE ABOVE CONNECTION, A REVIEW OF THE PREAMBLE TO THE LABOUR RELATIONS ACT IS RELEVANT. IT READS:

"WHEREAS IT IS IN THE PUBLIC INTEREST OF THE PROVINCE OF ONTARIO TO FURTHER HARMONIOUS RELATIONS BETWEEN EMPLOYERS AND EMPLOYEES BY ENCOURAGING THE PRACTICE AND PROCEDURE OF COLLECTIVE BARGAINING BETWEEN EMPLOYERS AND TRADE UNIONS AS THE FREELY DESIGNATED REPRESENTATIVES OF EMPLOYEES."

27. THE PROPER EXERCISE OF DISCRETION IN APPLICATIONS FOR CONSENT TO INSTITUTE PROSECUTION REQUIRES A REVIEW OF ALL THE CIRCUMSTANCES. FOR THAT REASON THE BOARD, IN THE PRESENT CASE, HEARD EVIDENCE REVEALING THE CONDUCT AND RELATIONSHIP OF THE PARTIES THROUGHOUT THE BARGAINING PROCEDURES THAT RESULTED IN THIS APPLICATION AND THE COMPORTMENT OF THE PARTIES UP TO THE DATE OF HEARING.

28. IT IS TO BE OBSERVED THAT IN CONSIDERING ALL ASPECTS OF THIS MATTER, THE BOARD IS FULLY COGNIZANT OF THE FACT THAT TWO WRONGS DO NOT MAKE A RIGHT AND THAT THERE MAY WELL BE CIRCUMSTANCES WHERE, THE PREREQUISITES OR ONE OF THEM BEING PRESENT, CONSENT OUGHT TO BE GIVEN NOTWITHSTANDING THE FACT THAT THERE HAD OCCURRED A BREACH OF THE ACT BY THE PARTY APPLYING.

29. IN THE PRESENT CASE, HOWEVER, THE INESCAPABLE CONCLUSION

IS THAT THE ACTION COMPLAINED OF WAS PROVOKED BY AND AROSE DIRECTLY OUT OF THE ATTEMPT OF THE UNION TO USE AN ILLEGAL STRIKE AS A BARGAINING TOOL AND CONTINUED BECAUSE OF THE UNION'S REFUSAL TO END IT DESPITE THE RESPONDENT'S ASSURANCE OF ITS WILLINGNESS TO BARGAIN IN ABSENCE OF THE STRIKE.

30. IN ADDITION, THE BOARD IS PERSUADED ON LOOKING AT THE SITUATION AS A WHOLE THAT NOTHING WHICH MIGHT IN ANY WAY CONTRIBUTE TO THE RESTORATION OF A PROPER RELATIONSHIP BETWEEN THE PARTIES OR WHICH WOULD TEND TO ENCOURAGE THE PRACTICE AND PROCEDURES OF ORDERLY COLLECTIVE BARGAINING AS REQUIRED BY THE LAW COULD RESULT FROM A PROSECUTION WHETHER THE SAME WERE TO BE SUCCESSFUL OR NOT. ON THE CONTRARY, IT WOULD APPEAR THAT TO GRANT CONSENT WOULD ONLY BE TO PROVIDE ANOTHER ROSTRUM AND ANOTHER ARENA FOR THE PROLONGATION OF THE WHOLE DISPUTE.

31. THE BOARD THEREFORE, IN THE EXERCISE OF ITS DISCRETION, WOULD DENY THE APPLICANT CONSENT TO PROSECUTE EVEN IF A PRIMA FACIE CASE OR ARGUABLE POINT OF LAW HAD IN FACT BEEN ESTABLISHED.

32. THE APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: OCTOBER 10, 1972.

1. MOST OF THE RELEVANT FACTS IN THIS CASE ARE AS OUTLINED IN THE DECISION OF THE MAJORITY. TO PUT THIS CASE IN PROPER PERSPECTIVE AS A BASIS FOR MY DISSENTING DECISION, I FIND IT NECESSARY TO OUTLINE CERTAIN OTHER EVIDENTARY FACTS WHICH ARE NOT OUTLINED IN THE MAJORITY DECISION.

2. EVIDENCE WAS ADDUCED BY THE APPLICANT WITH REGARD TO BARGAINING PRIOR TO THE WALKOUT ON JULY 12, 1972. THIS EVIDENCE WAS TO THE EFFECT THAT THE PARTIES FIRST MET IN THIS ROUND BARGAINING ON MAY 18, 1972. PRIOR TO THIS MEETING, THE APPLICANT UNION HAD GIVEN THE RESPONDENT HOSPITAL A LIST OF ITS PROPOSED REQUESTS FOR STUDY. AT THE MEETING, THE RESPONDENT HOSPITAL'S LABOUR CONSULTANT ASKED THE APPLICANT TO JUSTIFY THE UNION'S REQUESTS. THE APPLICANT, BY WAY OF REPLY, ASKED THE LABOUR CONSULTANT IF THE HOSPITAL HAD GONE THROUGH THE UNION'S REQUESTS AND IF THE HOSPITAL WOULD GRANT ANY OF THEM? THE CONSULTANT'S REPLY WAS NO, NO, NO.

3. FOLLOWING THIS STATED POSITION BY THE HOSPITAL, THE NEGOTIATIONS CAME TO AN ABRUPT END.

4. THE UNION APPLIED FOR CONCILIATION AND SUBSEQUENTLY THE PARTIES MET AGAIN IN BARGAINING AT CONCILIATION OFFICER LEVEL. THE EVIDENCE OF THIS MEETING ADDUCED BY THE APPLICANT WAS THAT THERE WAS NO PROGRESS IN BARGAINING AND THE MEETING LASTED FOR ONLY ONE AND ONE HALF HOURS. THE CONCILIATION OFFICER WAS QUOTED AS SAYING TO THE UNION PRESIDENT THAT THE HOSPITAL'S POSITION IN BARGAINING WAS SO ARCHAIC THAT HE, THE OFFICER, WAS GOING TO MAKE A NO BOARD REPORT TO THE MINISTER OF LABOUR.

5. WHILE WAITING FOR THE NO BOARD REPORT FROM THE MINISTER, THE UNION PRESIDENT SAID THAT HE HAD CONTACTED HIGH SENIOR OFFICERS OF THE CONCILIATION BRANCH TO ATTEMPT MEDIATION OF THE DISPUTE. THERE WAS NO PROGRESS IN THIS ATTEMPT AT NEGOTIATION AND THE UNION PRESIDENT TOLD US IN EVIDENCE THAT A SENIOR CONCILIATION OFFICER HAD REMARKED TO HIM "HOW CAN YOU PEOPLE STAND THAT (SIC). THE HOSPITAL MANAGEMENT ARE SO OUT OF TIME - THEY DO NOT WANT TO NEGOTIATE AN AGREEMENT.

6. SOON THEREAFTER, THE UNION CALLED A MEETING OF THE EMPLOYEES AND INFORMED THEM OF THE HISTORY OF BARGAINING TO THAT TIME. THE MEMBERS WERE TOLD THAT THE HOSPITAL DID NOT WANT TO NEGOTIATE WITH THE UNION. A MOTION WAS PASSED AT THIS MEETING PROVIDING FOR A WALKOUT OF THE EMPLOYEES TO GO INTO EFFECT IF THE HOSPITAL DID NOT WANT TO NEGOTIATE.

7. THE UNION PRESIDENT THEN CONTACTED THE HOSPITAL AND INFORMED THEM OF THE MOTION PASSED BY THE EMPLOYEES AT THE UNION MEETING. A NEGOTIATING MEETING BETWEEN THE PARTIES WAS ARRANGED AND THE PARTIES MET AND RESUMED BARGAINING AT 11:30 P.M. ON JULY 11, 1972. THE SEQUENCE OF EVENTS FROM THAT TIME IS SET OUT IN THE MAJORITY DECISION COMMENCING AT PARAGRAPH NINE.

8. IN AN APPLICATION FOR CONSENT TO INSTITUTE PROSECUTION, IT IS NOT REQUIRED TO ESTABLISH THAT A RESPONDENT IS GUILTY OF AN OFFENCE. IT IS SUFFICIENT TO ESTABLISH, BROADLY SPEAKING, A PRIMA FACIE CASE, KEEPING THIS FACT IN MIND AND HAVING REGARD TO ALL THE EVIDENCE BEFORE THE BOARD, IT IS NOT IN DISPUTE THAT AT THE RELEVANT TIME THE HOSPITAL WAS IN VIOLATION OF SECTION 3 OF THE HOSPITAL ACT. SECTION 3 READS:

WHERE THE MINISTER HAS INFORMED EACH OF THE PARTIES UNDER CLAUSE B OF SECTION 16 OF THE LABOUR RELATIONS ACT THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD, OR WHERE THE REPORT OF A CONCILIATION BOARD APPOINTED UNDER CLAUSE A OF THAT SECTION OR OF A MEDIATOR APPOINTED UNDER SECTION 14 OF THAT ACT HAS BEEN RELEASED BY THE MINISTER TO EACH OF THE PARTIES UNDER SUBSECTION 5 OF SECTION 29 OF THAT ACT, AND IN EITHER CASE A COLLECTIVE AGREEMENT HAS NOT BEEN MADE, THE PARTIES SHALL MEET FORTHWITH AND BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT.

9. THE MINISTER OF LABOUR HAD ADVISED THE PARTIES IN ACCORDANCE WITH SECTION 3 OF THE HOSPITAL ACT THAT HE DID "NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD". FOLLOWING THIS INFORMATION, THE PARTIES WERE BOUND BY THE CLEAR AND UNAMBIGUOUS LANGUAGE OF THIS SECTION TO THE EFFECT "THE PARTIES SHALL MEET FORTHWITH AND BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT."

IT IS NOT IN DISPUTE THAT THE UNION ENDEAVOURED TO MEET WITH THE HOSPITAL IN ACCORDANCE WITH THIS SECTION OF THE ACT. THE HOSPITAL REFUSED TO MEET AND THEREFORE DID NOT MAKE THE FIRST PRELIMINARY STEP CONTINGENT ON BARGAINING IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT.

10. THE HOSPITAL'S STATED REASON FOR VIOLATING THIS PART OF THE LAW WAS BECAUSE THE UNION AT THAT TIME WAS ENGAGED IN AN ILLEGAL STRIKE.

11. SECTION 8(1) OF THE HOSPITAL ACT READS:

NOTWITHSTANDING ANYTHING IN THE LABOUR RELATIONS ACT, NO HOSPITAL EMPLOYEES TO WHOM THIS ACT APPLIES SHALL STRIKE AND NO EMPLOYER OF SUCH EMPLOYEES SHALL LOCK THEM OUT.

HAVING REGARD TO THE CLEAR LANGUAGE OF THIS SECTION, I CANNOT BE IN DISPUTE THAT THE UNION WAS IN CLEAR VIOLATION OF THIS SECTION OF THE LAW. THE UNION PLEADS IT HAD JUSTIFICATION FOR ENGAGING IN AN ILLEGAL STRIKE BECAUSE OF THE ALLEGED ILLEGAL ACTS OF THE EMPLOYER IN NOT BARGAINING IN GOOD FAITH. IN THE INSTANT CASE, WE ARE NOT CALLED ON TO MAKE A FINDING ON THE MATTER OF THE ILLEGAL STRIKE. THIS MATTER IS THE CONCERN OF ANOTHER TRIBUNAL. I AM NOT IN ANY WAY CONDONING THE ACTION OF THE UNION IN THIS ILLEGAL STRIKE. WE ARE SEIZED IN THIS CASE WITH THE ALLEGATION OF LAW BREAKING BY THE HOSPITAL.

12. THE INDUSTRIAL RELATIONS SCENARIO IN THIS MATTER IS ONE IN WHICH A VITAL PUBLIC BODY, A LARGE HOSPITAL IN A LARGE METROPOLITAN AREA IS IN NEGOTIATION WITH THEIR EMPLOYEES AND THE BARGAINING AGENT OF SUCH EMPLOYEES FOR THE RENEWAL OF A COLLECTIVE AGREEMENT. THE PARTIES ARE BOUND BY THE LAWS ENCOMPASSED IN THE HOSPITAL ACT AND THE ONTARIO LABOUR RELATIONS ACT FOR THE CONDUCT TO BE PURSUED BY THEM IN SUCH ENDEAVOUR.

13. ON THE EVIDENCE ADDUCED IN THIS MATTER, THERE IS A PRIMA FACIE CASE MADE OUT AND AN ARGUABLE QUESTION OF LAW WELL ESTABLISHED TO SUPPORT THE ALLEGATIONS OF THE APPLICANT.

14. IT IS NOT IN DISPUTE, BASED ON THE EVIDENCE, THAT BOTH PARTIES, THE HOSPITAL AND THE UNION, HAVE ACTED OUTSIDE THE LAW GOVERNING THEIR INDUSTRIAL RELATIONS. SANDWICHED IN BETWEEN THESE TWO DISPUTANTS ARE THE PUBLIC, SOME OF WHOM AT THE RELEVANT TIME ARE PATIENTS IN THE HOSPITAL.

15. THE UNION ACCUSES THE HOSPITAL OF BAD FAITH IN BARGAINING IN VIOLATION OF THE LAW. THE HOSPITAL ACCUSES THE UNION OF ENGAGING IN AN ILLEGAL STRIKE IN VIOLATION OF THE LAW. THE UNION IN THE INSTANT CASE ACCUSES THE HOSPITAL OF A CLEAR VIOLATION OF SECTION 3 OF THE HOSPITAL ACT. HAVING REGARD TO ALL THE EVIDENCE IN THIS MATTER, I AM SATISFIED THAT THE ALLEGATIONS BY BOTH THE HOSPITAL

AND THE UNION HAVE BEEN ESTABLISHED PRIMA FACIE AND THAT THERE IS AN ARGUABLE QUESTION OF LAW INVOLVED IN THESE ALLEGATIONS. THE UNION CLAIMS JUSTIFICATION FOR ITS ILLEGAL ACT BECAUSE OF THE ALLEGED VIOLATION OF THE LAW BY THE HOSPITAL. THE HOSPITAL CLAIMS JUSTIFICATION FOR ITS ILLEGAL ACT BECAUSE OF THE ILLEGAL BEHAVIOUR OF THE UNION. FOR EITHER PARTY IN THIS VITAL PUBLIC INTEREST DISPUTE INVOLVING HOSPITAL PATIENT CARE TO CLAIM JUSTIFICATION FOR LAW BREAKING BECAUSE OF THE DIRTY HANDS OF THE OTHER IS COMPLETELY UNACCEPTABLE TO ME.

16. THE ONTARIO LABOUR RELATIONS ACT AND THE HOSPITAL ACT CONTAIN A NUMBER OF PROCEDURES DESIGNED TO SECURE INDUSTRIAL PEACE. THEY CONTAIN PROVISIONS DESIGNED TO REMEDY CONDUCT THAT DOES NOT CONFORM TO THE ACTS AND WHICH LEAD TO INDUSTRIAL DISRUPTION.

17. THE LEGISLATURE HAS INVESTED THIS BOARD WITH A DISCRETION AS TO WHETHER A CONSENT TO PROSECUTE SHOULD BE GRANTED IN THESE CASES. THE LEGISLATURE RECOGNIZED THAT THERE MIGHT BE CASES IN WHICH ALTHOUGH CERTAIN UNLAWFUL ACTS HAVE BEEN COMMITTED NEVERTHELESS THE BOARD MIGHT REFRAIN FROM ISSUING SUCH CONSENTS. OVER THE YEARS, THE BOARD HAS EXERCISED THIS DISCRETION WITH WISDOM AND GOOD JUDGEMENT. THE BOARD, FOR INSTANCE, HAS USED THIS DISCRETION TO KEEP FROM THE COURTS SUCH CASES AS EMOTIONAL, TEMPORARY, AND ISOLATED INSTANCES OF UNLAWFULNESS. I AM NOT AWARE OF ANY INSTANCE IN WHICH THE BOARD USED THIS DISCRETION IN A JUNGLE SITUATION SIMILAR TO THE PRESENT CASE IN WHICH BOTH PARTIES BLATANTLY THUMB THEIR NOSES AT THE LEGAL PROCEDURES GOVERNING THEIR BEHAVIOUR IN COLLECTIVE BARGAINING. BLATANT LAW BREAKING WITH IMPUNITY IS A SURE ROAD TO SOCIAL ANARCHY.

18. IF THIS APPLICATION WAS SUCCESSFUL, THE APPLICANT WOULD BE REQUIRED TO SUBSEQUENTLY APPEAR BEFORE A JUSTICE OF THE PEACE AND SWEAR AN INFORMATION PURSUANT TO THE PROCEDURES CONTAINED IN PART XXIV OF THE CRIMINAL CODE CONCERNING SUMMARY CONVICTIONS. UNDER MOST PROVINCIAL ACTS, MATTERS PROCEED DIRECTLY TO THE COURTS UPON THE LAYING OF INFORMATION. HOWEVER, UNDER THE ONTARIO LABOUR RELATIONS ACT, THE CONSENT OF THIS BOARD IS INTERPOSED PRIOR TO THE LAYING OF AN INFORMATION. A CONSENT TO PROSECUTE AND THE SUBSEQUENT PROSECUTION HEARING BEFORE A PROVINCIAL COURT JUDGE ARE PUBLIC AND PROVIDE A FORUM TO REFLECT PUBLIC DISAPPROVAL OF CONDUCT WHICH VIOLATES THE LABOUR LAW. IN THE INSTANT CASE, THERE IS NO REASON WHY THE HOSPITAL SHOULD BE PERMITTED TO VIOLATE THE HOSPITAL ACT AND THE ONTARIO LABOUR RELATIONS ACT WITH IMPUNITY AND ESCAPE THE SANCTIONS OF PUBLIC DISAPPROVAL INHERENT IN A PROSECUTION.

19. IN THE CONDUCT OF THIS VERY SERIOUS INDUSTRIAL RELATIONS DISPUTE INVOLVING ALLEGATIONS OF BAD FAITH IN BARGAINING, SURROUNDED BY ALLEGATIONS OF AN ILLEGAL STRIKE IN A HOSPITAL, THE APPARENTLY HARSH AND EXTRAORDINARY MASSIVE FIRING BY AN EMPLOYER OF 350 OF HIS EMPLOYEES, IT WOULD INDEED BE ADVOCACY OF JUNGLE LAW TO ACCEPT THE PLEADINGS THAT THE ILLEGAL ACT OF ONE PARTY IS AN OPEN SESAME FOR THE DEFIANCE OF LAW BY THE OTHER PARTY. OUR DECISION HERE CAN HAVE

WIDE REACHING IMPLICATIONS, NOT ONLY IN THE INSTANT CASE AND THE EVENTUAL RESOLVE OF THE MATTERS IN DISPUTE BETWEEN THE PARTIES HEREIN, BUT IT HAS EVEN FAR GREATER IMPLICATIONS IN ALL FUTURE INDUSTRIAL RELATIONS IN ONTARIO CONCERNING PARTIES BOUND BY THE HOSPITAL ACT. IN LIGHT OF ALL OF THE CIRCUMSTANCES OF THIS CASE, ONLY POTENTIAL LAW BREAKERS COULD TAKE COMFORT FROM THE USE OF THE BOARD DISCRETIONS NOT TO GRANT CONSENT TO HAVE THIS MATTER BROUGHT BEFORE A PROVINCIAL JUDGE FOR A PUBLIC HEARING ON ITS MERITS. THE PUBLIC INTEREST, NOT ONLY IN THE INSTANT DISPUTE BUT IN THE FUTURE OF HOSPITAL NEGOTIATIONS IN ONTARIO, REQUIRES ME IN THE PERFORMANCE OF MY RESPONSIBILITY AS A MEMBER OF THIS BOARD TO GRANT THE APPLICANT CONSENT TO PROSECUTE THE HOSPITAL FOR THE ALLEGED VIOLATION OF SECTION 3 OF THE HOSPITAL ACT.

2057-72-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA A.F.L., C.I.O., C.L.C. (APPLICANT) V. SPRUCELEIGH FARMS, A DIVISION OF CANADA PACKERS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: GARY CHERTKOFF AND DON DAYMAN FOR THE APPLICANT; A. P. TARASUK, W. MCLEOD AND R. MURRAY FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER H. ADE:
OCTOBER 2, 1972.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE RESPONDENT TOOK THE POSITION THAT THE EMPLOYEES OF THE RESPONDENT WITH WHOM WE ARE HERE CONCERNED ARE EMPLOYED IN AGRICULTURE WITHIN THE MEANING OF SECTION 2(B) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY THE ACT HAS NO APPLICATION TO THEM.

2. THE FACTS OF THIS CASE ARE NOT IN DISPUTE.

3. THE RESPONDENT IS, AMONG OTHER THINGS, ENGAGED IN THE BUSINESS OF RAISING CHICKENS. THE RESPONDENT OPERATES A BREEDING FARM WHERE EMPLOYEES ARE ENGAGED IN TENDING HENS AND COCKERELS WHOSE BUSINESS IT IS TO PRODUCE EGGS. AFTER THE EGGS ARE HATCHED, OTHER EMPLOYEES OF THE RESPONDENT DELIVER THE EGGS IN TRUCKS FROM THE BREEDING FARMS TO THE RESPONDENT'S HATCHERY. THE RESPONDENT EMPLOYS ANOTHER GROUP OF EMPLOYEES IN ITS HATCHERY IN BRANTFORD. THESE EMPLOYEES GRADE THE EGGS, TEND THE INCUBATORS AND ADMINISTER TO THE HATCHED CHICKS WHICH ARE PACKAGED IN CONTAINERS AND ARE SHIPPED TO GROWING FARMS. THE RESPONDENT EMPLOYS TRUCK DRIVERS TO DELIVER THE HATCHED CHICKS TO THE GROWING FARMS. FINALLY, THE RESPONDENT'S EMPLOYEES ON ITS GROWING FARMS LOOK AFTER THE CHICKENS WHILE THEY ARE GROWING UNTIL SUCH STAGE AS THEY ARE READY FOR MARKET.

4. THE RESPONDENT ALSO HAS CONTRACTUAL RELATIONSHIP WITH OTHER OPERATORS OF BOTH BREEDING FARMS AND GROWING FARMS. HOWEVER, WE ARE NOT CONCERNED WITH THE EMPLOYEES OF SUCH OTHER OPERATORS. WE ARE ALSO NOT CONCERNED WITH ANY OF THE RESPONDENT'S EMPLOYEES ON THE BREEDING FARMS AND GROWING FARMS OPERATED BY THE RESPONDENT. THE ONLY EMPLOYEES OF THE RESPONDENT WITH WHOM WE ARE HERE CONCERNED ARE THE RESPONDENT'S TRUCK DRIVERS WHO DELIVER THE EGGS TO THE HATCHERY AND THE TRUCK DRIVERS WHO DELIVER THE HATCHED CHICKS TO THE GROWING FARMS AND ALSO THE EMPLOYEES OF THE RESPONDENT WHO ARE EMPLOYED IN ITS HATCHERY IN BRANTFORD. BOTH THE EMPLOYEES AT THE RESPONDENT'S BREEDING FARMS AND GROWING FARMS ARE IN A DIFFERENT LOCATION FROM THE RESPONDENT'S HATCHERY. THE REASON FOR SEPARATING THE OPERATIONS OF THE BREEDING FARMS, THE GROWING FARMS AND THE HATCHERY IS FOR THE PURPOSE OF SANITATION AND DISEASE CONTROL.

5. IT WAS THE APPLICANT'S POSITION THAT BOTH THE TRUCK DRIVERS AND THE RESPONDENT'S EMPLOYEES IN ITS HATCHERY IN BRANTFORD ARE NOT ONLY SEPARATE FROM THE EMPLOYEES AT ITS BREEDING AND GROWING FARMS AND ACCORDINGLY CANNOT BE CONSIDERED TO BE AGRICULTURAL EMPLOYEES WITHIN THE MEANING OF SECTION 2(B) OF THE ACT. THE APPLICANT ARGUED THAT THE HATCHERY AND TRUCKING OPERATIONS ARE SEPARATE AND DISTINGUISHABLE FROM THE FARMING OPERATIONS CARRIED ON BY THE RESPONDENT. THE APPLICANT TOOK THE POSITION THAT AGRICULTURE HAS REFERENCE TO A FARMING OPERATION AND SINCE THE HATCHERY IS PHYSICALLY LOCATED IN THE CITY OF BRANTFORD, IT COULD NOT PROPERLY BE CONSTRUED AS A "FARM".

6. HAVING REGARD TO THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THE RESPONDENT'S OPERATIONS WITH WHICH WE ARE HERE CONCERNED IS AN INTEGRAL PART OF THE PRODUCTION OF CHICKENS. WHILE THE BREEDING, HATCHING AND GROWING OPERATIONS ARE PHYSICALLY SEPARATED FOR THE PURPOSE OF SANITATION AND DISEASE CONTROL, THE THREE SEGMENTS OF THE OPERATION ARE ALL PART OF THE LIFE CYCLE OF A CHICKEN AND EACH FORMS AN INTEGRAL PART IN THE OPERATION OF RAISING CHICKENS. THE FACTS OF THIS CASE ARE DISTINGUISHABLE FROM THE FACTS OF THE ONTARIO TREE FRUITS CO-OPERATIVE LIMITED CASE, 62 CLLC 1044, ¶16,235, AND OTHER SIMILAR CASES WHICH FOLLOWED THAT DECISION. THE EMPLOYEES OF THE RESPONDENT WITH WHOM WE ARE HERE CONCERNED ARE NOT ENGAGED IN THE "MARKETING" OF CHICKENS BUT RATHER ARE ENGAGED IN THE "GROWING" OF CHICKENS. SINCE THE GROWING OF CHICKENS AS AN ENTERPRISE IS COMMONLY ACCEPTED AS BEING CARRIED ON BY FARMERS AND SINCE FARMERS ARE EMPLOYED IN AGRICULTURE, WE FIND THAT THE GROWING OF CHICKENS AND INDEED ANY OTHER TYPE OF LIVESTOCK IS PART OF THE BUSINESS OF AGRICULTURE WITHIN THE MEANING OF SECTION 2(B) OF THE LABOUR RELATIONS ACT. SINCE WE HAVE FOUND THAT THE EMPLOYEES OF THE RESPONDENT WHO OPERATE TRUCKS AND WORK IN THE RESPONDENT'S HATCHERY FORM AN INTEGRAL PART OF THE RESPONDENT'S CHICKEN PRODUCTION, WE ACCORDINGLY FIND THAT SUCH PERSONS ARE EMPLOYED IN AGRICULTURE WITHIN THE MEANING OF SECTION 2(B) OF THE ACT AND THE ACT ACCORDINGLY HAS NO APPLICATION TO THEM.

7. THIS APPLICATION IS THEREFORE TERMINATED.

DECISION OF BOARD MEMBER E. BOYER: OCTOBER 2, 1972.

I DISSENT. I FIND THAT THE UNIT PROPOSED BY THE APPLICANT IS APPROPRIATE FOR COLLECTIVE BARGAINING AND I FURTHER FIND THAT THE LEGISLATURE DID NOT INTEND TO DENY THESE EMPLOYEES THE BENEFITS OF COLLECTIVE BARGAINING. I WOULD THEREFORE HAVE DEALT WITH THE APPLICATION ON ITS MERITS.

2293-72-U: WILLIAM STOUTLEY (COMPLAINANT) V. BARTENDERS & WAITERS UNION LOCAL 280 AND EL MOCAMBO TAVERNE (RESPONDENTS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: W. STOUTLEY FOR THE COMPLAINANT; F. CORTESE FOR THE RESPONDENT UNION LOCAL 280 AND J. G. TAIT FOR THE RESPONDENT EL MOCAMBO TAVERNE.

DECISION OF THE BOARD: OCTOBER 5, 1972.

1. THE NAME "BARTENDERS & WAITERS UNION LOCAL 280 EL MOCAMBO TAVERNE" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "BARTENDERS & WAITERS UNION LOCAL 280 AND EL MOCAMBO TAVERNE, RESPONDENTS."
2. THIS IS A COMPLAINT FILED UNDER SECTION 79 OF THE LABOUR RELATIONS ACT WHEREIN THE COMPLAINANT WILLIAM STOUTLEY ALLEGES THAT HE HAS BEEN DEALT WITH BY THE RESPONDENTS CONTRARY TO THE PROVISIONS OF SECTION 60 OF THE SAID ACT.
3. THE FACTS GIVING RISE TO THIS COMPLAINT WE FIND, ARE AS FOLLOWS: THE COMPLAINANT WILLIAM STOUTLEY IS A MEMBER IN GOOD STANDING IN BARTENDERS & WAITERS UNION LOCAL 280, (HEREINAFTER REFERRED TO AS THE RESPONDENT UNION). ON JUNE 3, 1972, STOUTLEY WAS DISCHARGED BY HIS EMPLOYER, THE RESPONDENT EL MOCAMBO TAVERNE. ON JUNE 9, 1972, STOUTLEY ATTENDED AT THE OFFICES OF THE RESPONDENT UNION WHEREIN A GRIEVANCE WAS FILED ON HIS BEHALF. FOLLOWING AN INVESTIGATION INTO THE MATTER BY FRANK CORTESE, A REPRESENTATIVE OF THE RESPONDENT UNION, THE GRIEVANCE WAS REFERRED TO THE EXECUTIVE COMMITTEE WHICH FOUND NO MERIT IN PROCEEDING WITH IT TO ARBITRATION PURSUANT TO SECTION 12 OF THE COLLECTIVE AGREEMENT BETWEEN THE NAMED RESPONDENT HEREIN. ON JUNE 15, 1972, CORTESE ADVISED STOUTLEY OF THE EXECUTIVE BOARD DECISION. WHEN QUESTIONED BY STOUTLEY AS TO WHETHER THERE WAS ANYONE TO WHOM HE COULD FURTHER APPEAL TO AS REGARDS THE PROCESSING OF HIS GRIEVANCE, CORTESE REPLIED "NO, THAT WAS IT, ONCE IT HAD GONE THROUGH THE EXECUTIVE BOARD." HOWEVER, UPON GIVING EVIDENCE IN DEFENCE ON BEHALF OF THE RESPONDENT UNION, CORTESE ADVISED THE BOARD THAT IT WAS OPEN TO THE COMPLAINANT TO BRING THE MATTER BEFORE THE MEMBERSHIP. IN THIS REGARD, HE STATED THAT A MEMBERSHIP MEETING WAS SCHEDULED FOR JUNE

18, 1972. HOWEVER, HE COULD NOT RECALL WHETHER HE ADVISED STOUTLEY AT THE TIME, OF THESE UNION PROCEEDINGS. HAVING REGARD TO THE TOTALITY OF THE EVIDENCE, WE ARE SATISFIED THAT STOUTLEY WAS NOT IN FACT ADVISED OF HIS FURTHER RIGHTS IN THIS MATTER.

4. SECTION 88(2) OF THE LABOUR RELATIONS ACT PROVIDES:

"ANY ACT OR THING DONE OR OMITTED BY AN OFFICER, OFFICAL OR AGENT OF A TRADE UNION OR COUNCIL OF TRADE UNIONS OR EMPLOYERS' ORGANIZATION WITHIN THE SCOPE OF HIS AUTHORITY TO ACT ON BEHALF OF THE UNION, COUNCIL OR ORGANIZATION SHALL BE DEEMED TO BE AN ACT OR THING DONE OR OMITTED BY THE UNION, COUNCIL OR ORGANIZATION."

5. ALTHOUGH WE ARE SATISFIED, HAVING REGARD TO ALL OF THE CIRCUMSTANCES HEREIN, THAT CORTESE, AND HENCE THE RESPONDENT UNION, DID NOT ACT IN A DISCRIMINATORY MANNER OR IN BAD FAITH IN THE REPRESENTATION OF STOUTLEY, WE DO HOWEVER FIND CORTESE'S ACTIONS ON BEHALF OF THE RESPONDENT UNION IN THIS REGARD WERE CONDUCTED "IN A MANNER THAT IS ARBITRARY" WITHIN THE MEANING OF SECTION 60 OF THE SAID ACT.

6. HAVING REGARD THEREFORE TO THE PROVISIONS OF SECTION 79 (4)(c) OF THE SAID ACT AND TAKING INTO ACCOUNT ALL OF THE CIRCUMSTANCES IN THIS CASE, THE BOARD DIRECTS THAT THE RESPONDENT UNION PAY TO WILLIAM STOUTLEY THE SUM OF \$951.68 AS COMPENSATION FOR LOSS OF EARNINGS FROM JUNE 3, 1972 TO THE DATE OF THIS DECISION. THE PARTIES SHALL MEET FORTHWITH TO AGREE UPON THE AMOUNT OF LOSS OF EARNINGS, IF ANY SUSTAINED BY WILLIAM STOUTLEY BETWEEN THE DATE OF THIS DECISION AND HIS ACTUAL RE-EMPLOYMENT. THE COMPLAINANT HOWEVER SHALL MAKE EVERY EFFORT TO PROCURE EMPLOYMENT WHICH WILL PRODUCE EARNINGS EQUAL TO OR EXCEEDING THE WEEKLY REMUNERATION PAID HIM BY THE RESPONDENT EL MOCAMBO TAVERNE AS OF JUNE 3, 1972. HIS EFFORTS IN THIS REGARD SHALL NOT BE RESTRICTED TO A COMPARABLE POSITION HE HELD WITH THE EL MOCAMBO TAVERNE. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES IN THIS REGARD, THE AMOUNT OF ANY SUCH FURTHER COMPENSATION PAYABLE, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF ANY PARTY HEREIN FOR A FURTHER HEARING FOR THIS PURPOSE.

7. THE COMPLAINANT ALSO NAMED THE EMPLOYER AS A RESPONDENT HEREIN NOTWITHSTANDING THE FACT THAT SECTION 60 OF THE ACT HAS REFERENCE ONLY TO THE UNION. IN ANY EVENT, WE FIND THAT THE RESPONDENT EMPLOYER IN THESE CIRCUMSTANCES IS NOT IN BREACH OF ANY PROVISIONS OF THE ACT AND THE COMPLAINT INsofar AS IT RELATES TO EL MOCAMBO TAVERNE, IS ACCORDINGLY DISMISSED.

2318-72-U: RODERIC E. McDONALD (COMPLAINANT) v. N. J. SPIVAK LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: RODERIC McDONALD FOR THE COMPLAINANT; A. P. POLISHUK FOR THE RESPONDENT.

DECISION OF THE BOARD:

OCTOBER 23, 1972.

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2. THE COMPLAINANT RODERIC McDONALD COMPLAINS THAT HE WAS DISCHARGED BY THE RESPONDENT COMPANY ON JUNE 27, 1972 BECAUSE OF HIS TRADE UNION ACTIVITIES CONTRARY TO SECTION 58 OF THE LABOUR RELATIONS ACT. THE RELEVANT EVIDENCE ADDUCED AT THE HEARING OF THE COMPLAINT IS SUMMARIZED BELOW.

3. PRIOR TO HIS DISCHARGE THE COMPLAINANT HAD BEEN EMPLOYED BY THE RESPONDENT AS A READY-MIX DRIVER SINCE APRIL OF 1971. IN THE SPRING OF THIS YEAR THE COMPLAINANT WAS SELECTED BY THE OTHER DRIVERS IN THE EMPLOY OF THE RESPONDENT TO BE THE HEAD OF A THREE-MAN COMMITTEE TO NEGOTIATE THE RENEWAL OF AN AGREEMENT WITH THE RESPONDENT WHICH COVERED THE WAGES AND WORKING CONDITIONS OF THE DRIVERS. THE AGREEMENT WHICH HAD BEEN NEGOTIATED BY A SIMILAR EMPLOYEES' COMMITTEE A YEAR EARLIER WAS DUE TO EXPIRE ON APRIL 15, 1972. THE OTHER TWO PERSONS SELECTED TO BE ON THE COMMITTEE WITH THE COMPLAINANT WERE NORMAN WESTON, ANOTHER DRIVER IN THE EMPLOY OF THE RESPONDENT, AND CLAYTON HEFLEY, A DRIVER IN THE EMPLOY OF A RELATED COMPANY HIGHCREST PROPERTIES LIMITED. THE PRESIDENT OF BOTH COMPANIES WAS N. J. SPIVAK.

4. WITHOUT GOING INTO DETAIL, THE NEGOTIATIONS BETWEEN THE COMMITTEE ON BEHALF OF THE DRIVER EMPLOYEES AND N. J. SPIVAK AND DALE TRINIER, THE PLANT MANAGER OF THE RESPONDENT, ON BEHALF OF THE COMPANY WERE UNSUCCESSFUL. THAT IS TO SAY, THE TWO PARTIES WERE UNABLE TO REACH A MUTUALLY SATISFACTORY AGREEMENT. SUBSEQUENT TO THE BREAKDOWN OF NEGOTIATIONS SOME OF THE DRIVERS EXPRESSED A DESIRE TO SEEK REPRESENTATION BY A TRADE UNION. TOWARDS THIS END THE COMPLAINANT SOUGHT OUT THE REPRESENTATIVE OF THE UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION IN THE AREA WHO UNDERTOOK TO ORGANIZE THE EMPLOYEES OF THE RESPONDENT AND PROVIDED THE COMPLAINANT WITH MEMBERSHIP APPLICATION CARDS IN THE UNION. THE COMPLAINANT WAS ACTIVE IN THE ORGANIZING CAMPAIGN. LATE IN APRIL THE UNION APPLIED TO THIS BOARD FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT. THE COMPLAINANT ATTENDED THE BOARD HEARING OF THE APPLICATION IN SUPPORT OF THE UNION ON MAY 29, 1972. SUBSEQUENT TO THE HEARING THE BOARD DIRECTED THE TAKING OF A REPRESENTATION VOTE, WHICH WAS HELD ON THURSDAY, JUNE 22, 1972. IMMEDIATELY FOLLOWING THE TAKING OF THE VOTE THE BALLOTS WERE COUNTED AND IT WAS FOUND THAT THE UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION HAD LOST THE VOTE.

5. THERE ARE SERIOUS CONFLICTS IN THE EVIDENCE OF THE COMPLAINANT ON THE ONE HAND AND KEN CAMERON, A BATCHER DISPATCHER EMPLOYED BY THE RESPONDENT, AND DALE TRINIER ON THE OTHER HAND AS TO THE EVENTS THAT TRANSPIRED BETWEEN JUNE 22ND AND JUNE 27TH, THE DATE THE COMPLAINANT WAS DISCHARGED BY THE RESPONDENT. THE COMPLAINANT TESTIFIED THAT HE TELEPHONED THE COMPANY ON THE MORNING OF FRIDAY, JUNE 23RD AND ADVISED KEN CAMERON THAT HE WOULD NOT BE IN FOR WORK ON THAT DAY BECAUSE HIS WIFE WAS ILL AND HE HAD TO ARRANGE FOR HER TO SEE A DOCTOR THAT DAY. CAMERON, WHO, AMONG OTHER THINGS, IS RESPONSIBLE FOR KEEPING THE RECORDS OF THE TIME WORKED BY THE DRIVERS, GAVE A VERY DIFFERENT ACCOUNT OF HIS TELEPHONE CONVERSATION WITH THE COMPLAINANT THAT MORNING. CAMERON TESTIFIED THAT THE COMPLAINANT INQUIRED WHETHER HE SHOULD COME IN FOR WORK THAT DAY IN VIEW OF THE FACT THAT IT WAS RAINING. ACCORDING TO CAMERON, HE REPLIED THAT IT WOULD NOT BE NECESSARY FOR THE COMPLAINANT TO COME IN THAT DAY BUT THAT IF IT GOT BUSY HE WOULD CALL HIM. CAMERON'S EVIDENCE IS THAT THE COMPLAINANT MADE NO MENTION OF HIS WIFE BEING ILL OR ABOUT MAKING ARRANGEMENTS FOR HER TO SEE A DOCTOR.

6. THE COMPLAINANT TESTIFIED THAT HE WAS NOT ABLE TO GET AN APPOINTMENT WITH THE DOCTOR UNTIL MONDAY, JUNE 26TH. HIS EVIDENCE IS THAT HE TELEPHONED CAMERON THAT MORNING AND INQUIRED OF HIM AS TO HOW MUCH WORK THERE WOULD BE THAT DAY SINCE IT WAS RAINING. ACCORDING TO THE COMPLAINANT, CAMERON REPLIED THAT NO ORDERS HAD BEEN CANCELLED BUT THAT HE DID NOT EXPECT THAT THERE WOULD BE MUCH WORK THAT DAY. THE COMPLAINANT TESTIFIED THAT HE TOLD CAMERON THAT HE HAD TO TAKE HIS WIFE TO SEE A DOCTOR AND WAS AWAITING TO HEAR FROM THE DOCTOR'S OFFICE AS TO THE TIME OF THE APPOINTMENT. THE COMPLAINANT STATED THAT HE ADVISED CAMERON THAT AS SOON AS HE KNEW THE TIME OF THE DOCTOR'S APPOINTMENT HE WOULD TELEPHONE AGAIN TO SEE IF HE WAS NEEDED FOR WORK THAT DAY. THE EVIDENCE OF THE COMPLAINANT IS THAT THE DOCTOR'S OFFICE ADVISED HIM AT 11:30 THAT MORNING THAT HIS WIFE'S APPOINTMENT WOULD BE AT 2:00 IN THE AFTERNOON. THE TESTIMONY OF CAMERON ON THE OTHER HAND IS THAT THE COMPLAINANT NEITHER TELEPHONED TO SAY THAT HE WOULD NOT BE IN FOR WORK NOR DID HE REPORT FOR WORK THAT DAY.

7. THERE WERE FILED IN EVIDENCE THREE BOOKS IN WHICH CAMERON RECORDED ON A DAILY BASIS THE TIME AT WHICH EACH DRIVER "PUNCHED" IN AND OUT OF THE RESPONDENT'S PREMISES AND THE NUMBER OF HOURS THEY WORKED EACH DAY. THE BOOKS ALSO RECORD, IN SOME INSTANCES, WHETHER OR NOT WHEN A DRIVER WAS ABSENT HE HAD TELEPHONED IN TO REPORT THAT HE WOULD NOT BE AT WORK. CAMERON'S EVIDENCE IS THAT HE RECORDED ALL THE ENTRIES ON THE DAY IN QUESTION. THE ENTRY OPPOSITE THE COMPLAINANT'S NAME FOR MONDAY, JUNE 26, 1972 READS "DID NOT CALL OR COME IN". THE RECORDS FURTHER INDICATE THAT JUNE 26TH WAS A BUSY DAY. THAT IS, SEVENTEEN DRIVERS WORKED ON THAT DATE AND ON THE AVERAGE EACH DRIVER WORKED SLIGHTLY OVER ELEVEN HOURS. BY WAY OF COMPARISON, SIX LESS DRIVERS WORKED ON THE AVERAGE THE SAME NUMBER OF HOURS ON FRIDAY, JUNE 23RD. ON THE LATTER DATE THE RECORDS SHOW THAT FOUR DRIVERS, INCLUDING THE COMPLAINANT, TELEPHONED AND REPORTED THAT THEY WOULD BE ABSENT FROM WORK. ON MONDAY, JUNE 26TH THE COMPLAINANT WAS THE ONLY DRIVER ABSENT.

8. DALE TRINIER TESTIFIED THAT CAMERON REPORTED TO HIM ON THE

MORNING OF JUNE 26TH THAT THE COMPLAINANT HAD NEITHER "CALLED IN" NOR REPORTED FOR WORK. TRINIER'S EVIDENCE IS THAT HE TELEPHONED THE COMPLAINANT AT HIS HOME ABOUT 11:00 A.M. THAT DAY AND INQUIRED WHY HE HAD NOT REPORTED FOR WORK. ACCORDING TO TRINIER, THE COMPLAINANT REPLIED THAT HE HAD PERSONAL PROBLEMS WHICH HE WANTED TO DISCUSS WITH TRINIER LATER THAT DAY. THE TESTIMONY OF TRINIER IS THAT IT WAS ARRANGED THAT THE COMPLAINANT WOULD COME TO THE OFFICE THAT AFTERNOON AROUND 3:00 P.M. TRINIER STATED THAT HE REMAINED ON THE COMPANY'S PREMISES UNTIL 6:00 P.M. THAT DAY BUT THAT THE COMPLAINANT NEITHER CAME TO SEE HIM IN PERSON NOR TELEPHONED HIM. THE COMPLAINANT FOR HIS PART TESTIFIED THAT TRINIER TELEPHONED HIM AT HOME AROUND NOON AND THAT TRINIER'S OPENING REMARK WAS "ARE YOU GOING TO WORK THIS YEAR". ACCORDING TO THE COMPLAINANT HE REPLIED THAT HIS WIFE WAS VERY ILL AND HE EXPLAINED THAT HE HAD TO TAKE HER TO THE DOCTOR AT 2:00 THAT AFTERNOON. THE TESTIMONY OF THE COMPLAINANT IS THAT HE UNDERTOOK TO TELEPHONE TRINIER WHEN HE KNEW THE RESULTS OF THE DOCTOR'S EXAMINATION OF HIS WIFE. THE COMPLAINANT FURTHER TESTIFIED THAT HE TOLD TRINIER DURING THEIR TELEPHONE CONVERSATION THAT HE WANTED TO TALK TO HIM ABOUT HIS FAMILY AND EMPLOYMENT SITUATION AND THAT TRINIER HAD REPLIED "YOU HAD BETTER DO SOMETHING PRETTY SOON." THE EVIDENCE OF THE COMPLAINANT IS THAT HE TELEPHONED THE COMPANY'S OFFICE AT ABOUT 4:30 P.M. THAT DAY AND WHEN HE ASKED TO SPEAK TO TRINIER, HE WAS ADVISED BY CLARK ELLIOTT, A SALESMAN AND FIELD REPRESENTATIVE, WHO ANSWERED THE TELEPHONE, THAT TRINIER WAS NOT IN THE YARD AND THAT HE (ELLIOTT) WAS NOT SURE WHETHER TRINIER WOULD BE BACK THAT AFTERNOON. THE COMPLAINANT SAID HE MADE NO FURTHER EFFORT TO COMMUNICATE WITH TRINIER THAT DAY. ACCORDING TO TRINIER, THE COMPLAINANT MADE NO MENTION OF HIS WIFE BEING ILL OR A DOCTOR'S APPOINTMENT DURING THEIR TELEPHONE CONVERSATION IN THE MORNING.

9. THE COMPLAINANT TESTIFIED THAT THE DOCTOR TOLD HIM ON THE AFTERNOON OF MONDAY, JUNE 26TH THAT HIS WIFE WOULD HAVE TO BE ADMITTED TO A HOSPITAL IMMEDIATELY AND THAT HE WOULD TRY TO GET HER A BED FOR THE FOLLOWING MORNING. ON THE MORNING OF TUESDAY, JUNE 27TH, THE COMPLAINANT DID NOT REPORT FOR WORK AND DID NOT TELEPHONE THE COMPANY TO ADVISE THEM OF HIS ABSENCE. THE COMPLAINANT'S EXPLANATION FOR FAILING TO "TELEPHONE IN" WAS THAT HE EXPECTED TO TAKE HIS WIFE TO THE HOSPITAL THAT MORNING AND RATHER THAN TELEPHONE HE PLANNED TO COME AND SEE TRINIER PERSONALLY THEREAFTER. ACCORDING TO THE COMPLAINANT'S EVIDENCE, HE WAS ADVISED AT NOON THAT DAY THAT A BED WOULD NOT BE AVAILABLE IN THE HOSPITAL FOR HIS WIFE FOR TWO OR THREE DAYS. ACCORDING TO THE COMPLAINANT, HE CAME TO THE RESPONDENT'S PREMISES AT APPROXIMATELY 2:00 P.M. THAT DAY AND ENCOUNTERED TRINIER IN HIS CAR JUST PREPARING TO LEAVE THE YARD. THE EVIDENCE OF THE COMPLAINANT IS THAT HE INQUIRED OF TRINIER AS TO WHETHER HE WOULD BE GONE VERY LONG TO WHICH TRINIER REPLIED "I DON'T KNOW. IT MAY BE SOME TIME. WHY?" THE COMPLAINANT TESTIFIED THAT HE TOLD TRINIER THAT HE WANTED TO TALK TO HIM ABOUT "THE SITUATION". ACCORDING TO THE COMPLAINANT TRINIER REPLIED THAT IT WOULD NOT MAKE ANY DIFFERENCE AND ADVISED HIM THAT HIS PAY WAS READY "UP-STAIRS". THE COMPLAINANT TESTIFIED THAT HE ASKED IF HE WAS "FIRED" AND TRINIER ANSWERED IN THE AFFIRMATIVE.

10. THE EVIDENCE OF TRINIER IS THAT WHEN CAMERON TOLD HIM THAT

THE COMPLAINANT HAD NOT REPORTED FOR WORK ON TUESDAY, JUNE 27TH AND HAD NOT "TELEPHONED IN", HE (TRINIER) DECIDED THAT MORNING TO DISCHARGE THE COMPLAINANT AND INSTRUCTED THE OFFICE TO PREPARE HIS PAY. TRINIER TESTIFIED THAT HE MADE THIS DECISION BECAUSE OF THE COMPLAINANT'S ABSENCE ON JUNE 25TH AND 26TH AND HIS FAILURE TO REPORT THAT HE WOULD NOT BE AT WORK ON THOSE DAYS. TRINIER STATED THAT IN MAKING HIS DECISION TO DISCHARGE THE COMPLAINANT HE ALSO TOOK INTO CONSIDERATION THE COMPLAINANT'S UNSATISFACTORY ABSENTEEISM RECORD OVER THE PREVIOUS SIX TO EIGHT MONTHS. TRINIER CONFIRMED THE TESTIMONY OF THE COMPLAINANT THAT HE ADVISED THE COMPLAINANT OF HIS DISCHARGE WHEN HE ENCOUNTERED HIM IN THE COMPANY'S YARD ON THE AFTERNOON OF JUNE 27TH.

11. IN VIEW OF THE SERIOUS CONFLICTS IN THE EVIDENCE OF THE COMPLAINANT ON THE ONE HAND AND THE EVIDENCE OF CAMERON AND TRINIER ON THE OTHER HAND, WE ARE CALLED UPON TO ASSESS AND DETERMINE THE WEIGHT WHICH CAN BE GIVEN TO THEIR TESTIMONY, PARTICULARLY AS IT RELATES TO THE COMPLAINANT'S LAST THREE DAYS OF EMPLOYMENT WITH THE COMPANY. THE COMPANY'S RECORDS INDICATE THAT MONDAY, JUNE 26TH WAS A VERY BUSY DAY IN THE RESPONDENT'S OPERATIONS AND NOTICEABLY BUSIER THAN THE PREVIOUS FRIDAY. THESE FACTS LEND SUPPORT TO THE TESTIMONY OF CAMERON THAT HIS TELEPHONE CONVERSATION WITH THE COMPLAINANT AS TO WHETHER HIS SERVICES WOULD BE REQUIRED TOOK PLACE ON FRIDAY MORNING, JUNE 23RD, AND NOT ON THE MORNING OF MONDAY, JUNE 26TH. FURTHER, WE FIND THAT THE COMPLAINANT'S ACCOUNT OF HIS ACTIVITIES ON JUNE 23RD, 26TH AND 27TH IS NOT WHOLLY PLAUSIBLE AND HIS EXPLANATION FOR SOME OF HIS CONDUCT DURING THIS PERIOD WE FIND LESS THAN CONVINCING. IN THE RESULT WE PREFER AND ACCEPT THE TESTIMONY OF CAMERON AND TRINIER OVER THAT OF THE COMPLAINANT.

12. THE COMPLAINANT ADMITTED THAT HE HAD TAKEN AN AUTHORIZED LEAVE OF ABSENCE IN OCTOBER OF 1971 BUT THAT TRINIER HAD NOT REPRIMANDED HIM FOR THAT ABSENCE. THE RECORDS WOULD INDICATE THAT THE COMPLAINANT WAS ABSENT ON A CONSIDERABLE NUMBER OF OCCASIONS BETWEEN OCTOBER AND THE DATE OF HIS DISCHARGE, PARTICULARLY IN THE MONTH OF FEBRUARY AND THE FIRST HALF OF JUNE. THE COMPLAINANT TESTIFIED THAT HIS ABSENCES SUBSEQUENT TO OCTOBER WERE AS THE RESULT OF LEGITIMATE ILLNESSES OR THAT THE RESPONDENT HAD NOT REQUIRED HIS SERVICES. CAMERON WAS QUITE CANDID IN ADMITTING THAT HE DID NOT KNOW THE REASONS FOR THE ABSENCE OF THE COMPLAINANT ON MANY OCCASIONS AND THAT HIS RECORDS WERE OF LITTLE ASSISTANCE IN THIS RESPECT. TRINIER'S EVIDENCE IS THAT HE HAD REPRIMANDED THE COMPLAINANT FOR HIS ABSENCE IN OCTOBER OF 1971 AND AGAIN HAD DONE SO IN FEBRUARY OF 1972.

13. THIS BOARD IS NOT CALLED UPON TO MAKE ANY FINDING WITH REGARD TO THE ATTENDANCE RECORD OF THE COMPLAINANT. OUR ONLY CONCERN WITH THAT RECORD IS WHATEVER AID IT MAY BE IN ASSISTING US IN DECIDING WHETHER THE GRIEVOR WAS IN FACT DISCHARGED BECAUSE OF HIS UNION ACTIVITY. SIMILARLY, WE ARE NOT CALLED UPON TO DECIDE WHETHER TRINIER WAS JUSTIFIED IN DISCHARGING THE COMPLAINANT BECAUSE OF HIS ABSENCE FROM WORK ON JUNE 26TH AND 27TH. AGAIN, WE ARE ONLY CONCERNED WITH THE EVENTS IMMEDIATELY LEADING UP TO THE DISCHARGE OF THE COMPLAINANT FOR THE LIGHT THOSE EVENTS SHED WITH REGARD TO THE TRUE REASONS FOR HIS DISCHARGE.

14. THERE IS NO QUESTION THAT THE COMPLAINANT PLAYED A LEADING ROLE BOTH IN THE NEGOTIATIONS WITH THE RESPONDENT FOR AN AGREEMENT COVERING THE DRIVERS AND IN THE SUBSEQUENT ORGANIZING CAMPAIGN AND APPLICATION FOR CERTIFICATION MADE BY THE UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION. FURTHER, THE EVIDENCE INDICATES THAT THE RESPONDENT WAS AWARE OF THE ACTIVITIES ON THE PART OF THE COMPLAINANT. THE FACT THAT THE COMPLAINANT WAS DISCHARGED FIVE DAYS AFTER THE REPRESENTATION VOTE WAS TAKEN AND IT WAS KNOWN TO ALL THAT THE CERTIFICATION APPLICATION HAD FAILED IS OPEN TO THE INTERPRETATION THAT THE RESPONDENT DECIDED TO DISCHARGE THE COMPLAINANT AS RE-TRIBUTION FOR HIS UNION ACTIVITIES. THE COMPLAINANT URGES THE BOARD TO REACH THIS CONCLUSION.

15. WHILE THIS CONCLUSION IS CLEARLY OPEN TO THE BOARD, HAVING CAREFULLY CONSIDERED ALL OF THE EVIDENCE WE FEEL COMPELLED TO REJECT IT. RATHER, WE ARE SATISFIED THAT TRINIER DISCHARGED THE COMPLAINANT ON JUNE 27, 1972 FOR THE REASONS WHICH HE ADVANCED AND NOT BECAUSE OF THE COMPLAINANT'S PRIOR UNION ACTIVITIES. IN THE RESULT, THEN, WE DO NOT FIND THAT THE RESPONDENT ACTED IN CONTRAVENTION OF SECTION 58 OF THE LABOUR RELATIONS ACT.

16. THE COMPLAINT ACCORDINGLY IS DISMISSED.

2566-72-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. IMPERIAL TOBACCO PRODUCTS (ONTARIO) LIMITED (RESPONDENT) V. TOBACCO WORKERS INTERNATIONAL UNION, LOCAL 323 (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H. ADE AND J. J. O'KEEFE.

DECISION OF THE BOARD: OCTOBER 16, 1972.

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2. ON SEPTEMBER 15, 1972 THE APPLICANT APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT PRESENTLY REPRESENTED BY THE INTERVENER AND REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. SEPTEMBER 25, 1972 WAS FIXED AS THE TERMINAL DATE FOR THIS APPLICATION.

3. THE BOARD BY ITS DECISION DATED SEPTEMBER 19, 1972 APPOINTED AN EXAMINER TO CONFER WITH THE PARTIES WITH RESPECT TO, INTER ALIA, THE DESCRIPTION AND COMPOSITION OF THE VOTING CONSTITUENCY AND THE ARRANGEMENTS FOR THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE.

4. THE EXAMINER CONVENED A MEETING OF THE PARTIES ON SEPTEMBER 29, 1972 AND ADVISED COUNSEL FOR THE PARTIES THAT ALL OF THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT WAS DATED SUBSEQUENT TO SEPTEMBER 15, 1972, THE DATE OF THE MAKING OF THIS APPLICATION. APPARENTLY, COUNSEL FOR THE APPLICANT REALIZED THAT, IN VIEW OF THE DATES APPEARING ON THE APPLICANT'S MEMBERSHIP EVIDENCE, SUCH EVIDENCE FAILED TO MEET THE REQUIREMENTS OF SECTION 8(2) OF THE LABOUR RELATIONS ACT SINCE NONE OF THE EMPLOYEES IN THE VOTING CONSTITUENCY WERE MEMBERS OF THE APPLICANT

AT THE TIME THIS APPLICATION WAS MADE. COUNSEL FOR THE APPLICANT ADVISED THE EXAMINER THAT HE DID NOT WISH TO PROCEED WITH THE PRE-HEARING REPRESENTATION VOTE MEETING AND THE MEETING WAS ADJOURNED.

5. ON OCTOBER 6, 1972 COUNSEL FOR THE APPLICANT WROTE THE FOLLOWING LETTER TO THE BOARD:

I AM INSTRUCTED TO ADVISE THE BOARD THAT THE APPLICANT IN THE ABOVE-NOTED MATTER WITHDRAWS ITS REQUEST FOR A PRE-HEARING VOTE AND IN THE CIRCUMSTANCES ASKS THAT THE BOARD CONTINUE TO PROCESS THIS APPLICATION FOR CERTIFICATION IN THE USUAL WAY.

6. THE APPLICANT HAS NOT INDICATED ITS REASONS FOR REQUESTING THAT THE BOARD "CONTINUE TO PROCESS THIS APPLICATION FOR CERTIFICATION IN THE USUAL WAY". HOWEVER, IN VIEW OF THE STATEMENT CONTAINED IN THE RESPONDENT'S REPLY THAT THE LAST TWO MONTHS OF OPERATION OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER EXPIRED ON JULY 14, 1972, WE ASSUME THAT THE APPLICANT SEEKS TO AMEND ITS APPLICATION BY DELETING THE REQUEST FOR A PRE-HEARING VOTE IN ORDER TO PRESERVE THE DATE OF MAKING OF THIS APPLICATION BECAUSE OF CONSIDERATIONS RELATING TO TIMELINESS. IF CONCILIATION SERVICES HAVE BEEN MADE AVAILABLE TO THE PARTIES TO THE AGREEMENT AFTER THE DATE OF THE MAKING OF THE INSTANT APPLICATION, A SUBSEQUENT APPLICATION WOULD BE UNTIMELY PURSUANT TO THE PROVISIONS OF SECTION 53(2) OF THE ACT. IT IS THEREFORE UNDERSTANDABLE WHY THE APPLICANT IN THIS MATTER WISHES TO PRESERVE THE DATE OF MAKING OF THIS APPLICATION RATHER THAN COMMENCING A NEW APPLICATION AT THIS TIME.

7. HOWEVER THAT MAY BE, THE APPLICANT WRONGLY ASSUMES THAT THE BOARD WILL "CONTINUE TO PROCESS THIS APPLICATION FOR CERTIFICATION IN THE USUAL WAY". IT IS THE BOARD'S REGULAR PRACTICE TO DENY AN APPLICANT'S REQUEST TO AMEND AN APPLICATION FOR A PRE-HEARING VOTE (WHICH IS MADE UNDER SECTION 8 OF THE ACT) AND CONVERT SUCH APPLICATION TO AN APPLICATION UNDER SECTION 7 OF THE ACT. THE DIFFERENT PROCEDURES ADOPTED BY THE BOARD UNDER SECTION 7 AND UNDER SECTION 8 OF THE ACT ARE MUTUALLY EXCLUSIVE. ONCE THE BOARD PROCESSES SUCH APPLICATIONS AND NOTIFIES THE OTHER PARTIES THAT THE APPLICATION HAS BEEN MADE, THE PROCEDURES FOLLOWED ARE NOT INTERCHANGEABLE. THE BOARD WILL NOT PERMIT LEAVE TO AMEND THE APPLICATION SO THAT THE TYPE OF APPLICATION IS CHANGED. IN THIS REGARD SEE PRACTICE NOTE NO. 3 PUBLISHED IN THE OFFICE CONSOLIDATION OF THE BOARD'S RULES OF PROCEDURE, REGULATIONS AND PRACTICE NOTICES.

8. THE NOTICE OF THE APPLICATION GIVEN TO EMPLOYEES WHERE A PRE-HEARING REPRESENTATION VOTE IS REQUESTED IS IN FORM 6 OF THE BOARD'S RULES AND NO INVITATION IS GIVEN TO THE EMPLOYEES TO FILE A STATEMENT OF OBJECTION IN SUCH NOTICE, SINCE A REPRESENTATION VOTE HAS BEEN REQUESTED BY THE APPLICANT. HOWEVER, WHERE A PRE-HEARING REPRESENTATION VOTE IS NOT REQUESTED, NOTICE OF THE APPLICATION IS GIVEN TO EMPLOYEES

IN FORM 5 OF THE BOARD'S RULES. FORM 5 INSTRUCTS EMPLOYEES HOW THEY MAY GIVE NOTICE OF THEIR OPPOSITION TO THE APPLICATION. ACCORDINGLY, EVEN IF THE BOARD WERE NOT TO TAKE INTO CONSIDERATION THE RIGHTS OF THE RESPONDENT AND THE INTERVENER AND WERE TO GRANT THE APPLICANT'S REQUEST TO AMEND ITS APPLICATION IN THIS MATTER, A NEW TERMINAL DATE WOULD HAVE TO BE FIXED SO THAT NOTICE OF THE RECONSTITUTED APPLICATION (IN FORM 5) COULD BE GIVEN TO EMPLOYEES IN ORDER THAT AN OPPORTUNITY BE AFFORDED THEM TO OBJECT TO THE APPLICATION. IF THE APPLICANT HAD MADE A NEW APPLICATION FOR CERTIFICATION IT COULD BE PROCESSED MORE EXPEDITIOUSLY THAN THE APPLICANT'S REQUEST IN THIS MATTER SINCE A NEW APPLICATION WOULD NOT REQUIRE THE BOARD TO MAKE AND ISSUE A DECISION CONCERNING A NEW TERMINAL DATE SINCE SUCH DECISION WOULD REQUIRE THE BOARD TO OBTAIN THE REPRESENTATIONS OF THE OTHER PARTIES PRIOR TO THE BOARD MAKING THAT DECISION.

9. ALTHOUGH THE APPLICANT MAY WISH TO PRESERVE THE DATE OF MAKING OF THIS APPLICATION, IT SHOULD NOT BE PERMITTED TO DO SO IF THE RIGHTS OF THE OTHER PARTIES MAY BE ADVERSELY AFFECTED. THE APPLICANT HAS REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN IN THIS MATTER AND IF IT SUFFERS LOSS BY REASON OF SUCH REQUEST IT ONLY HAS ITSELF TO BLAME. HOWEVER, THE INSTANT APPLICATION WOULD ADVERSELY AFFECT THE DUE PROCESS OF THE BARGAINING BETWEEN THE RESPONDENT AND THE INTERVENER UNTIL THE APPLICATION HAS BEEN DISPOSED OF. ANY DELAY IN THE PROCESSING OF THIS APPLICATION WOULD FURTHER DELAY THE COLLECTIVE BARGAINING RELATIONSHIP. AGAIN, IF A CONCILIATION OFFICER HAS NOW BEEN APPOINTED THE RESPONDENT AND THE INTERVENER ARE ENTITLED TO AVAIL THEMSELVES OF THESE SERVICES WITHOUT UNDUE INTERFERENCE BY THE APPLICANT. IN BALANCING THE RIGHTS OF THE APPLICANT TO HAVE ITS APPLICATION PROCESSED EXPEDITIOUSLY BY THE BOARD AND THE RIGHTS OF THE RESPONDENT AND THE INTERVENER TO PROCEED WITH THE COLLECTIVE BARGAINING PROCESS, WE FIND THAT THE APPLICANT, HAVING REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN AND HAVING FOUND ITSELF IN A POSITION WHERE ITS APPLICATION AS PRESENTLY FRAMED IS DOOMED FOR DISMISSAL BECAUSE OF THE REQUIREMENTS OF SECTION 8(2) OF THE ACT, SHOULD NOT AT THIS TIME BE PERMITTED TO RECONSTITUTE ITS APPLICATION IN THE MANNER PROPOSED BY IT TO THE DETRIMENT OF THE OTHER PARTIES. TO LOOK AT THE MATTER ANOTHER WAY, THE APPLICANT CAN BE IN NO BETTER POSITION IN ITS REQUEST OF OCTOBER 6 THAN IT WOULD HAVE BEEN IF IT HAD APPLIED FOR CERTIFICATION FOR THE FIRST TIME ON THAT DATE.

10. IF CONCILIATION SERVICES HAVE NOT BEEN REQUESTED BY THE OTHER PARTIES, THE APPLICANT MAY STILL HAVE AN OPPORTUNITY TO MAKE A NEW AND TIMELY APPLICATION FOR CERTIFICATION AND ACCORDINGLY MAY NOT BE ADVERSELY AFFECTED BY THE BOARD'S REFUSAL TO GRANT ITS REQUEST TO AMEND THE INSTANT APPLICATION.

11. FOR THE FOREGOING REASONS THE BOARD DENIES THE APPLICANT'S REQUEST FOR LEAVE TO WITHDRAW ITS REQUEST FOR A PRE-HEARING VOTE AND IN ACCORDANCE WITH ITS USUAL PRACTICE THE BOARD DISMISSES THIS APPLICATION. EVEN IF NO REQUEST FOR WITHDRAWAL HAD BEEN MADE BY THE APPLICANT, THE

BOARD, ON THE EVIDENCE BEFORE IT, FINDS THAT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY VOTING CONSTITUENCY THAT THE BOARD MIGHT DEEM TO BE APPROPRIATE WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE AND THE BOARD ON THOSE GROUNDS WOULD ACCORDINGLY DISMISS THE APPLICATION.

1699-72-U: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (COMPLAINANT) V. MICHAEL ROSEN REAL ESTATE LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: W. PEEL AND V. PINCIVERO FOR THE COMPLAINANT; JOHN PARKINSON FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 17, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE RESPONDENT HAS DEALT WITH VITO PINCIVERO CONTRARY TO THE PROVISIONS OF SECTION 58(A) OF THE LABOUR RELATIONS ACT AND REQUESTS THAT HE BE REINSTATED IN EMPLOYMENT WITHOUT LOSS OF SENIORITY AND WITH REIMBURSEMENT OF LOSS OF EARNINGS.

2. PINCIVERO WHO HAD BEEN EMPLOYED AS A REAL ESTATE SALESMAN WAS DISMISSED BY THE RESPONDENT ON FEBRUARY 4, 1972. IT IS CONTENDED BY THE COMPLAINANT THAT THE DISMISSAL OF PINCIVERO WAS BECAUSE HE WAS A MEMBER OF THE COMPLAINANT TRADE UNION.

3. THE RESPONDENT DENIES THE ALLEGATIONS OF THE COMPLAINANT AND STATES THAT PINCIVERO WAS DISMISSED BECAUSE OF DISRUPTIVE INFLUENCE IN THE RESPONDENT'S OFFICE; HIS INTENT TO LEAVE THE RESPONDENT'S OFFICE AND TAKE OTHERS WITH HIM AND BECAUSE HE WAS IN BREACH OF AN AGREEMENT WITH MICHAEL ROSEN REAL ESTATE LIMITED.

4. SECTION 58(A) OF THE ACT READS AS FOLLOWS:

58. NO EMPLOYER, EMPLOYERS' ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION,

(A) SHALL REFUSE TO EMPLOY OR TO CONTINUE TO EMPLOY A PERSON, OR DISCRIMINATE AGAINST A PERSON IN REGARD TO EMPLOYMENT OR ANY TERM OR CONDITION OF EMPLOYMENT BECAUSE THE PERSON WAS OR IS A MEMBER OF A TRADE UNION OR WAS OR IS EXERCISING ANY OTHER RIGHTS UNDER THIS ACT.

5. THE EVIDENCE INDICATES THAT PINCIVERO COMMENCED TO WORK FOR THE RESPONDENT IN DECEMBER 1961. IN NOVEMBER OF 1964, PINCIVERO QUIT OF HIS OWN ACCORD. THE RESPONDENT ATTRIBUTES THIS TO THE FACT THAT PINCIVERO WAS JEALOUS OF THE OTHER SALESMEN. THE RESPONDENT REHIRED PINCIVERO IN DECEMBER OF 1964. MICHAEL ROSEN TESTIFIED THAT PINCIVERO CALLED AND ASKED TO BE TAKEN BACK AND THAT THE REHIRING WAS ON THE UNDERSTANDING THAT PINCIVERO WOULD COOPERATE WITH THE OTHER SALESMEN. PINCIVERO SAID THAT ROSEN CALLED HIM BACK. IN LATE 1966, A DELEGATION OF EIGHT SALESMEN CAME TO ROSEN AND SAID THEY WOULD QUIT UNLESS PINCIVERO WAS DISCHARGED. ROSEN TRANSFERRED THE EIGHT SALESMEN TO A DIFFERENT OFFICE AND PINCIVERO WAS RETAINED AS AN EMPLOYEE. IN MARCH OF 1967, PINCIVERO WAS DISCHARGED BY THE RESPONDENT BECAUSE, ON ROSEN'S ESTIMONY, PINCIVERO WAS IMPOSSIBLE TO WORK WITH AND WAS HARASSING THE OTHER SALESMEN.

6. PINCIVERO AGAIN RETURNED TO WORK FOR THE RESPONDENT IN OCTOBER 1967. ROSEN TESTIFIED THAT DURING THIS LATEST PERIOD OF ABSENCE, PINCIVERO WOULD CONTINUALLY CALL THE RESPONDENT'S SALESMEN AND LEAVE MESSAGES FOR ROSEN TO CALL HIM BACK. EVENTUALLY, THEY MET AND DURING A HALF HOUR ROSEN ATTEMPTED TO PERSUADE PINCIVERO TO TRY TO COOPERATE WITH THE OTHER SALESMEN. ROSEN TESTIFIED THAT PINCIVERO PROMISED TO COOPERATE AND WAS REHIRED.

7. FROM THE DATE OF REHIRING THERE WERE, ACCORDING TO ROSEN, CONTINUOUS FIGHTS GOING ON BETWEEN PINCIVERO AND OTHER SALESMEN WHICH HE, ROSEN, ATTEMPTED TO REFEREE AND KEEP THE PEACE. IN APRIL 1970, PINCIVERO SIGNED AN UNDERTAKING NOT TO BE ENGAGED IN ANY BUSINESS OR OCCUPATION OR PROFESSION OTHER THAN REAL ESTATE BROKERAGE AS A SALESMAN. IN 1971, PINCIVERO BECAME INVOLVED IN A DISPUTE WITH ANOTHER SALESMAN OVER A COMMISSION WITH RESPECT TO THE SALE OF A PROPERTY ON 46 LANGHOLME DRIVE. IN ORDER TO SETTLE THIS MATTER, ROSEN PAID PINCIVERO AND ALLOWED THE OTHER SALESMAN TO KEEP HIS COMMISSION, ALTHOUGH HE DID NOT THINK PINCIVERO WAS ENTITLED TO ANYTHING.

8. IN 1971, PINCIVERO WALKED OUT OF THE OFFICE SEVERAL TIMES SAYING HE WAS QUITTING. IN THE FALL OF 1971, AFTER HIS RETURN FROM A HOLIDAY IN ITALY, PINCIVERO BECAME INVOLVED IN A DISPUTE WITH LAJOIE, ANOTHER SALESMAN, ABOUT A COMMISSION. THIS DISPUTE WENT ON FOR ABOUT TWO MONTHS. IN NOVEMBER OF THAT YEAR, ROSEN SPOKE TO PINCIVERO AND TOLD HIM HE WOULD HAVE TO SETTLE THINGS UP. EITHER HE WAS TO GO ELSEWHERE OR HE WAS TO STOP THE FIGHTING. ROSEN TESTIFIED THAT PINCIVERO WAS ALWAYS PROMISING BUT NEVER LIVED UP TO HIS PROMISES. HE TESTIFIED THAT PINCIVERO KEPT TELLING EVERYONE IN THE OFFICE, EXCEPT ROSEN HIMSELF, THAT HE WAS GOING TO QUIT. HE WAS CONSTANTLY GOING TO THE OFFICE OF JOE MAUTI - A FORMER EMPLOYEE OF THE RESPONDENT WHO IS NOW AN INDEPENDENT BROKER - WHERE HE TOLD WHAT WAS GOING ON IN THE RESPONDENT'S OFFICE.

9. THERE WAS EVIDENCE THAT IN THE LATTER YEARS OF HIS EMPLOYMENT, PINCIVERO WAS ENGAGED IN SEVERAL SPECULATIVE REAL ESTATE TRANSACTIONS ON

HIS OWN BEHALF. IN ADDITION, IN NOVEMBER OR DECEMBER 1971, PINCIVERO PURCHASED A BUILDING USED AS A FOOD MARKET. IN JANUARY OF 1972, HE WENT INTO THE FOOD MARKETING BUSINESS AS PARAMOUNT FOOD MARKET. PINCIVERO DENIED TAKING AN ACTIVE PART IN RUNNING THE BUSINESS. ROSEN TESTIFIED THAT PINCIVERO TOLD HIM HE WAS GOING INTO THE GROCERY BUSINESS. ROSEN CONSIDERED THIS TO BE CONTRARY TO THE UNDERTAKING OF APRIL 20, 1970 AND THAT IT WAS TAKING TOO MUCH OF PINCIVERO'S TIME. ROSEN TESTIFIED THAT HE SPOKE TO PINCIVERO SEVERAL TIMES ABOUT THIS.

10. IT WAS ABOUT THE SAME TIME, THAT IS, THE FIRST WEEK OF JANUARY, 1972, THAT THE UNION MADE APPLICATION FOR CERTIFICATION AS BARGAINING AGENT FOR THE SALESMEN EMPLOYED BY THE RESPONDENT. PINCIVERO SAID THAT AROUND JANUARY 6TH, 1972TH, A DAY OR TWO AFTER THE NOTICE OF THE APPLICATION HAD BEEN POSTED, ROSEN SAID TO HIM THAT AS SOON AS THE UNION THING WAS OVER, HE WAS GOING TO CLEAR THE OFFICE. HE INTERPRETED THIS REMARK AS INDICATIVE OF ROSEN'S OPPOSITION TO THE UNION. ROSEN DENIES HAVING MADE THE REMARK. ROSEN ADMITTED THAT HE TOLD SALESMEN WHO INQUIRED OF HIM ABOUT THE UNION THAT HE HAD NO OBJECTION TO THE WHOLE INDUSTRY BEING ORGANIZED BUT THAT HE THOUGHT IT UNFAIR TO SINGLE OUT HIS BUSINESS. PINCIVERO ALSO TESTIFIED THAT ROSEN KNEW AT ALL TIMES WHO WAS IN THE UNION. HE SAID A NUMBER OF PERSONS SIGNED THEIR CARDS AND PAID THE DOLLAR IN FRONT OF ROSEN. PINCIVERO SAID HE DID NOT DO THAT WHEN HE JOINED IN NOVEMBER OF 1971. PINCIVERO SAID THAT TALK ABOUT THE UNION WAS CONSTANTLY GOING ON IN THE OFFICE TO THE POINT THAT HE GOT FED UP HEARING ABOUT IT. PINCIVERO WAS QUITE SURE THAT ROSEN KNEW THAT HE WAS A MEMBER OF THE UNION. ROSEN SAYS THAT HE DID NOT KNOW ON FEBRUARY 4TH, 1972 THAT PINCIVERO HAD JOINED THE UNION. HE WAS AWARE, HOWEVER, THAT TWO OF THE SALESMEN, DI COSTA AND CUTULLE, WERE THE ORGANIZERS FOR THE UNION.

11. ON FEBRUARY 4, 1972, A DISCUSSION CONCERNING THE UNION TOOK PLACE AT THE RESPONDENT'S OFFICE. PINCIVERO RELATED THAT TWO OF THE SALESMEN, MOZZA AND SIMMONETTA, WERE TALKING ABOUT THE UNION IN THE PRESENCE OF ROSEN. SIMMONETTA SAID THAT HE DID NOT KNOW IF ALL THE SALESMEN KNEW WHAT THEY WERE DOING WHEN THEY SIGNED UNION CARDS. PINCIVERO TESTIFIED THAT HE, PINCIVERO, THEN SAID "INCLUDE ME TOO - I KNEW WHAT I SIGNED FOR BECAUSE I AM RESPONSIBLE TO THE PUBLIC". HE SAID THAT ROSEN WAS A LITTLE MAD WITH HIM FOR SAYING THAT.

12. ROSEN'S TESTIMONY WITH RESPECT TO THIS INCIDENT IS THAT FOLLOWING SIMMONETTA'S STATEMENT, PINCIVERO HAD SAID THAT THEY, THE SALESMEN, WERE ALL OVER TWENTY-ONE AND SHOULD KNOW WHAT THEY WERE DOING. ROSEN STATED THAT HE THEN SAID THAT HE WOULD BE ASHAMED TO ADMIT THAT ANY OF HIS SALESMEN SIGNED SOMETHING WITHOUT KNOWING WHAT THEY WERE SIGNING. THIS INCIDENT OCCURRED AROUND 10.30 A.M. ON FEBRUARY 4TH. ROSEN AND PINCIVERO BOTH LEFT AND PINCIVERO DID NOT RETURN UNTIL ABOUT 3.30 P.M. AT WHICH TIME HE WAS DISCHARGED.

13. ROSEN TOOK THE POSITION THAT THE DISCHARGE TOOK PLACE ON FEBRUARY 4TH BECAUSE OF CULMINATING INCIDENTS THAT OCCURRED THE PREVIOUS

EVENING AND AT NOON ON THAT DATE. ON THE PREVIOUS EVENING, ROSEN'S SECRETARY REPORTED THAT PINCIVERO HAD TOLD HER THAT HE WAS ABOUT TO LEAVE AND THAT HE WAS GOING TO TAKE SOME OF THE SALESMEN WITH HIM. AT NOON ON FEBRUARY 4TH, ROSEN RECEIVED A TELEPHONE CALL FROM MORDI REAL ESTATE REQUESTING HIM TO TRANSFER ONE OF THE SALESMEN, DEBELLIS, FROM MICHAEL ROSEN REAL ESTATE TO MORDI REAL ESTATE IN ACCORDANCE WITH THE REQUIREMENTS OF THE LAW.

14. ROSEN WAS CONSIDERABLY UPSET BY THIS AND PLACED THE BLAME FOR DEBELLIS LEAVING UPON PINCIVERO'S INTERFERENCE. DEBELLIS HAD HAD A DISPUTE WITH DI COSTA CONCERNING A COMMISSION. PINCIVERO TOLD DEBELLIS THAT ROSEN WOULD NEVER SETTLE THE MATTER TO HIS SATISFACTION AND OFFERED TO BET DEBELLIS \$100.00 ON IT. DEBELLIS DID NOT GIVE ROSEN AN OPPORTUNITY TO SETTLE THE MATTER BUT LEFT IMMEDIATELY AFTER PINCIVERO'S OFFER TO BET. ROSEN, APPARENTLY, DID NOT ATTEMPT TO ATTACH ANY RESPONSIBILITY TO DI COSTA WHO, AS NOTED, HE KNEW TO BE THE UNION ORGANIZER, FOR DEBELLIS' DEPARTURE.

15. ROSEN STATED THAT HE DECIDED HE COULD NOT LET PINCIVERO BREAK UP HIS BUSINESS. HE CALLED HIM INTO HIS OFFICE AT ABOUT 3.30 P.M. THERE IS SOME CONFLICT OF EVIDENCE AS TO WHAT TOOK PLACE AT THIS MEETING. WE PREFER ROSEN'S VERSION TO THAT OF PINCIVERO. HE SAID HE SPOKE TO PINCIVERO ABOUT DEBELLIS BUT THE FORMER MERELY LAUGHED AT HIM. HE SAID THAT HE EXPLAINED TO PINCIVERO THAT SINCE HE HAD BOUGHT THE GROCERY BUSINESS AND HAD BEEN GOING TO OTHER BROKERS LOOKING FOR A JOB (PINCIVERO, HE SAID REPLIED THAT HE HAD JUST BEEN "SHOPPING AROUND") HE COULD NOT KEEP HIM ON. ROSEN SAID HE TOLD PINCIVERO THAT UNDER THE CIRCUMSTANCES IT HAD BECOME DIFFICULT FOR THEM TO WORK TOGETHER WHERE HE, ROSEN, HAD TO SAY IN THE OFFICE TO PREVENT FIGHTS.

16. ROSEN TOLD PINCIVERO THAT HE COULD TAKE TWO OR THREE DAYS TO FINISH UP HIS WORK BEFORE HE LEFT. HE STATED THAT PINCIVERO THEN TOLD HIM TO TRANSFER HIS LISTINGS TO PARAMOUNT REAL ESTATE. ROSEN AGREED TO DO THIS. THE FOLLOWING DAY, PARAMOUNT REAL ESTATE PHONED REQUESTING THE TRANSFER. THE NECESSARY PAPERS WERE PICKED UP THE SAME MORNING.

17. JOE MAUTI, A REAL ESTATE BROKER WHO HAD FORMERLY BEEN WITH THE RESPONDENT, CONFIRMED THE EVIDENCE WITH RESPECT TO THE EIGHT SALESMEN WHO THREATENED TO QUIT BECAUSE OF PINCIVERO'S CONDUCT. HE ALSO TESTIFIED THAT PINCIVERO HAD BEEN APPROACHING HIM FOR A JOB AS A SALESMAN WHILE HE WAS EMPLOYED BY THE RESPONDENT.

18. THIS LATTER TESTIMONY LENDS CREDENCE TO ROSEN'S EVIDENCE IN WHICH HE STATED THAT HE BELIEVED PINCIVERO WAS SEEKING OTHER EMPLOYMENT. THIS WOULD ALSO APPEAR TO BE CONFIRMED BY THE FACT THAT PINCIVERO HAD APPARENTLY SET UP HIS TRANSFER TO PARAMOUNT REAL ESTATE AND HAD VIRTUALLY COMPLETED ARRANGEMENTS TO LEAVE THE RESPONDENT FOR PARAMOUNT ON FEBRUARY 4, 1972.

19. IN REVIEWING THE EVIDENCE, IT IS APPARENT THAT PINCIVERO TOOK

NO ACTIVE PART IN THE ACTIVITIES OF THE UNION OTHER THAN THAT HE SIGNED A MEMBERSHIP CARD. THE ORGANIZERS OF THE UNION, CUTELLE AND DI COSTA, WERE KNOWN TO BE SUCH BY ROSEN AND ACCORDING TO PINCIVERO HIMSELF SO WERE ALL THE OTHER SALESMEN WHO HAD SIGNED MEMBERSHIP CARDS.

20. WITH THOSE FACTS IN MIND AND HAVING REGARD TO THE OTHER EVIDENCE RELEVANT TO PINCIVERO'S RELATIONSHIP WITH ROSEN IN WHICH, WHEREVER THERE IS CONFLICT, THE BOARD PREFERS THAT OF ROSEN, THE BOARD FINDS THAT THE COMPLAINANT HAS NOT DISCHARGED THE ONUS ON IT TO ESTABLISH THAT THE RESPONDENT DEALT WITH PINCIVERO CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

21. THE COMPLAINT IS ACCORDINGLY DISMISSED.

2339-72-U: TORONTO PRINTING PRESSMEN & ASSISTANTS UNION LOCAL 10 (COMPLAINANT) V. WELLER PUBLISHING COMPANY LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND W. H. WIGHTMAN.

APPEARANCES AT THE HEARING: A. W. HALL FOR THE COMPLAINANT AND C. T. KERENYI FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 26, 1972.

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2. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT THE RESPONDENT HAS DEALT WITH SUSAN JUHASZ CONTRARY TO THE PROVISIONS OF SECTIONS 58(A) AND 58(C) OF THE ACT. THE COMPLAINANT REQUESTS THAT JUHASZ BE REINSTATED IN EMPLOYMENT AND BE COMPENSATED FOR ALL LOST EARNINGS.

3. JUHASZ TESTIFIED THAT AT ABOUT 1.30 P.M. ON TUESDAY, JULY 18, 1972, SHE WAS ASKED BY MR. VOROSVARY, THE OWNER AND PRESIDENT OF WELLER PUBLISHING COMPANY LIMITED, TO STEP INTO HIS OFFICE.

4. JUHASZ WENT TO VOROSVARY'S OFFICE WHERE TWO OTHER EMPLOYEES AND VOROSVARY WERE PRESENT. SHE STATED THAT SHE NOTICED THAT VOROSVARY HAD A LARGE OFFICIAL ENVELOPE IN HIS HAND. SHE SAID SHE WAS NOT SURE BUT WAS ALMOST CERTAIN THAT THE ENVELOPE CONTAINED DOCUMENTS THE UNION HAD SENT OUT. SHE SAID HER BELIEF THE DOCUMENTS WERE FROM THE UNION WAS BASED ON THE FACT THAT VOROSVARY STARTED A CONVERSATION ABOUT THE UNION. THE WITNESS DID NOT SAY SHE HAD SEEN THE CONTENTS OF THE ENVELOPE. SHE ALSO SAID THAT SHE HAD APPLIED FOR MEMBERSHIP IN THE UNION THE WEEK BEFORE AND EXPECTED THAT PAPERS CONCERNING THE UNION WOULD REACH THE COMPANY ABOUT MONDAY.

5. JUHASZ STATED THAT VOROSVARY SAID HE HAD TALKED TO THE OTHER GENTLEMEN PRESENT AND ASKED WHETHER THEY WANTED TO JOIN THE UNION AND

THAT THEY HAD SAID NO. SHE SAID, VOROSVARY THEN ASKED HER IF SHE WANTED TO JOIN THE UNION AND SHE HAD REPLIED THAT SHE DID. VOROSVARY THEN SAID, ACCORDING TO JUHASZ, THAT SHE COULD ENTER THE UNION BUT "NOT HERE AND NOT THROUGH ME". JUHASZ THEN SAID THAT IT WAS 2.30 P.M. AND THAT HE WAS GIVING HER CHEQUE AND SHE COULD GO HOME.

6. VOROSVARY STATED THAT THE MEETING OF THE TWO EMPLOYEES, TASKEHAS AND SADO, WAS CALLED TO DISCUSS THE SITUATION FOLLOWING NOTICE THAT ONE OF THE PAPERS HE PUBLISHED WOULD NOT BE ISSUED DURING A TWO WEEK PERIOD. HE SAID THAT THESE TWO WERE THEY KEY EMPLOYEES AND HE WANTED TO CONSULT THEM ON WHAT TO DO. HE TESTIFIED THAT WHEN JUHASZ WAS CALLED IN, IT WAS HIS INTENTION TO ADVISE HER OF A LAY-OFF ON FRIDAY, JULY 21ST. HE SAID SHE IMMEDIATELY STATED THAT SHE HAD MADE AN APPLICATION TO THE UNION WITHOUT ANY MENTION OF UNION ON HIS PART. HE STATED THAT JUHASZ HAD ALSO ALLEGED THAT EVERY ONE IN THE PLANT KNEW THAT HE, VOROSVARY, WANTED TO GET RID OF HER. HE SAID SHE BECAME QUITE EXCITED AND FINALLY INVITED HIM TO DISCHARGE HER RIGHT AWAY. BECAUSE OF THIS, HE LET HER GO RATHER THAN KEEP HER ON UNTIL FRIDAY.

7. VOROSVARY, IN ADDITION TO STATING THAT JUHASZ FIRST RAISED THE QUESTION OF THE UNION, ALSO DENIED HER STATEMENT THAT HE ASKED TASKEHAS AND SADO IF THEY WERE MEMBERS OF THE UNION. HE ALSO STATED THAT HE COULD NOT REMEMBER IF HE HAD AN ENVELOPE IN HIS HAND AT THE TIME OF THE INTERVIEW.

8. VOROSVARY SAID HE WAS NOT SURE OF WHEN HE RECEIVED THE NOTICE OF APPLICATION. HE KNEW IT CAME BY REGISTERED MAIL AND THAT HE HAD SIGNED FOR IT BEFORE THE INTERVIEW WITH JUHASZ, BUT THAT HE HAD NOT OPENED THE ENVELOPE UNTIL THE DAY FOLLOWING THE DISCHARGE OF JUHASZ.

9. THE EVIDENCE, INCLUDING THAT OF JUHASZ, INDICATES THAT A LAY-OFF OF TWO EMPLOYEES HAD OCCURRED IN JUNE 1972 AND THAT IT WAS GENERALLY UNDERSTOOD BY THE REMAINING EMPLOYEES THAT A FURTHER REDUCTION IN THE WORK FORCE WAS TO BE EXPECTED. ON THE FRIDAY, FOLLOWING JUHASZ'S DISCHARGE, A FURTHER EMPLOYEE, ROBERTS, WAS ALSO LAID OFF. THE WORK FORCE WHICH HAD NUMBERED SEVEN WAS THUS REDUCED BY TWO LAY-OFFS, ONE IN JUNE AND THE SECOND IN JULY, TO THREE EMPLOYEES. ONE OF THOSE RETAINED WAS KNOWN BY THE RESPONDENT TO BE A MEMBER OF THE UNION. HE WAS, HOWEVER, IN PROCESS OF BEING TRAINED IN THE USE OF NEW MACHINERY AND WAS THE ONLY EMPLOYEE FAMILIAR WITH ITS OPERATION.

10. THE BOARD FINDS ON THE EVIDENCE THAT THERE IS AN UNAVOIDABLE INFERENCE THAT THE LAY-OFF WAS ACCELERATED BY THE APPLICATION OF THE UNION FOR CERTIFICATION AND THAT THE DISCLOSURE OF HER UNION AFFILIATION WAS A CONTRIBUTING FACTOR TO THE SELECTION OF JUHASZ FOR EARLY TERMINATION.

11. HAVING IN MIND THE FACT THAT THE SECOND EMPLOYEE WAS LAID OFF ON FRIDAY, JULY 21ST, THE DATE UPON WHICH THE RESPONDENT STATED IT HAD INTENDED TO LAY-OFF JUHASZ WITH ONE WEEK'S PAY IN LIEU OF NOTICE, THE

BOARD DIRECTS THAT THE RESPONDENT FORTHWITH PAY TO SUSAN JUHASZ THE SUM OF \$66.00 AS COMPENSATION FOR WAGES LOST FROM AND INCLUDING WEDNESDAY, JULY 19TH, TO THE INCLUDING FRIDAY, JULY 21ST, 1972, TOGETHER WITH THE SUM OF \$110.00 IN LIEU OF NOTICE OF TERMINATION IN ACCORDANCE WITH THE EXPRESSED INTENT OF THE RESPONDENT.

12. THE BOARD FURTHER DIRECTS THAT PROPER AND EQUAL NOTICE AND CONSIDERATION FREE OF DISCRIMINATION BECAUSE OF HER UNION AFFILIATION BE GIVEN SUSAN JUHASZ BY THE RESPONDENT IF AND WHEN HER FORMER POSITION OR ONE SIMILAR THERETO BECOMES AVAILABLE.

2575-72-R: RONALD ANDERSON, EMERTEEN HURLEY, MARGARET CUSHMAN, LOIS LAUGHY, VIRGINIA BRAITHWAITE, HELEN OSBORNE, (APPLICANTS) V. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220 (RESPONDENT).

RE: GLENCOE NURSING HOME

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: EMERTEEN HURLEY, RONALD ANDERSON AND HELEN OSBORNE FOR THE APPLICANTS; TED WOHL FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 13, 1972.

1. THIS IS AN APPLICATION UNDER SECTION 49 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

2. THE RESPONDENT UNION WAS CERTIFIED BY THE ONTARIO LABOUR RELATIONS BOARD ON FEBRUARY 17, 1971 AS BARGAINING AGENT FOR ALL EMPLOYEES OF GLENCOE NURSING HOME WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

3. BY DECISION DATED MAY 5, 1972, A BOARD OF ARBITRATION ESTABLISHED UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, 1965, AND AMENDMENTS THERETO, DIRECTED THE RESPONDENT AND GLENCOE NURSING HOME TO ENTER INTO A COLLECTIVE AGREEMENT AS OUTLINED IN THE DOCUMENT GIVING EFFECT TO ITS DECISION. THE RESPONDENT DID NOT SIGN A COLLECTIVE AGREEMENT WITHIN THE TIME STIPULATED. THE BOARD OF ARBITRATION THEREUPON ISSUED AN ORDER UNDER SECTION 7(6) OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT IN WHICH IT ORDERED THAT THE DOCUMENT GIVING EFFECT TO ITS DECISION BE IN EFFECT AS A COLLECTIVE AGREEMENT. THE ORDER WAS MADE ON THE 20TH DAY OF JULY, 1972. THE DOCUMENT BECAME EFFECTIVE AS A COLLECTIVE AGREEMENT UPON THAT DATE AS PROVIDED IN THE SAID SECTION 7(6). THE COLLECTIVE AGREEMENT IS FOR A TERM OF ONE YEAR AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

4. SECTION 49(2) OF THE LABOUR RELATIONS ACT PROVIDES THAT WHERE THERE IS A COLLECTIVE AGREEMENT IN OPERATION AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS MAY ONLY BE BROUGHT AFTER THE COMMENCEMENT OF THE LAST TWO MONTHS OF THE OPERATION OF THE AGREEMENT. THE PRESENT APPLICATION WAS MADE ON SEPTEMBER 18, 1972, WHICH CLEARLY IS NOT WITHIN THE LAST TWO MONTHS OF THE OPERATION OF THE COLLECTIVE AGREEMENT. THE APPLICATION IS THEREFORE UNTIMELY AND IS ACCORDINGLY DISMISSED.

2624-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. SWING STAGE LIMITED (RESPONDENT) V. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION No. 172 (INTERVENER).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

DECISION OF THE BOARD: OCTOBER 17, 1972.

1. IN THIS APPLICATION FOR CERTIFICATION, THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT CONSISTED OF FIVE CERTIFICATES OF MEMBERSHIP IN THE FOLLOWING FORM:

CERTIFICATE OF MEMBERSHIP

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721

I, THE UNDERSIGNED, HEREBY CERTIFY THAT:

I AM A MEMBER OF LOCAL UNION _____ I.A. OF B.S. & O.I.

MY MONTHLY DUES OF \$ _____ ARE PAID FOR THE MONTH OF _____ 19 _____

I BECAME AN INITIATED MEMBER ON _____ OF _____ OF _____
DAY MONTH YEAR

I AM WILLING THAT LOCAL UNION _____, OR THE DISTRICT COUNCIL TO WHICH IT MAY BE AFFILIATED, OR THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, ITS OFFICERS OR NEGOTIATION COMMITTEE MEMBERS, MAY AND ARE HEREBY AUTHORIZED TO REPRESENT ME AND ACT ON MY BEHALF REGARDING WAGES, HOURS OF LABOUR, OR ANY CONDITION OF EMPLOYMENT.

MEMBER'S SIGNATURE

DATED AT _____ THIS _____ DAY OF
 _____ 19____.

CHECKED AND CERTIFIED CORRECT BY:

 SIGNATURE OF OFFICER

 POSITION

2. THE BLANK SPACES IN THE FIVE CERTIFICATES OF MEMBERSHIP ARE FILLED OUT WITH THE EXCEPTION OF THE BLANK SPACE PROVIDED FOR "SIGNATURE OF OFFICER" WHICH APPEARS AT THE END OF EACH CERTIFICATE OF MEMBERSHIP. THE BOARD HAS REQUIRED THAT SUCH CERTIFICATES OF MEMBERSHIP MUST BE CERTIFIED CORRECT BY AN OFFICER OF THE TRADE UNION WHO IS IN A POSITION TO DO SO. REFERENCE IS MADE TO THE FRANK LICARI & SONS CASE, OLRB M.R. APRIL 1967, P. 57 AND TO THE A. LOVISA MASONRY CONTRACTOR CASE, OLRB M. R. JULY 1970, P. 510.

3. THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT HAS NOT BEEN CERTIFIED CORRECT BY AN OFFICER OF THE APPLICANT AND THEREFORE DOES NOT MEET THE BOARD'S REQUIREMENTS RESPECTING CERTIFICATES OF MEMBERSHIP. THE BOARD, ACCORDINGLY, FINDS THAT THE APPLICANT HAS FAILED TO ESTABLISH THAT IT HAD ANY MEMBERS AT THE TIME THE APPLICATION WAS MADE IN ANY BARGAINING UNIT THE BOARD MIGHT FIND APPROPRIATE FOR THIS APPLICATION.

4. IN THE RESULT THE APPLICATION IS DISMISSED.

2609-72-R: W.T.T.F.M.P. WORKERS ASSOCIATION (APPLICANT) V. WILLIAMS MACHINES LIMITED (RESPONDENT) V. INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

DECISION OF THE BOARD: OCTOBER 18, 1972.

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2. THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT AND HAS REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. THE INTERVENER HAS ALSO APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED. THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT CONSISTS SOLELY OF DOCUMENTS WHICH READS AS FOLLOWS:

I, THE UNDERSIGNED, HEREBY CERTIFY THAT:

I AM A MEMBER OF THE W.T.T.F.M.P.
WORKERS ASSOCIATION AND HAVE PAID THE
\$1.00 INITIATION FEE.

I AGREE THAT THE MONTHLY DUES TO BE PAID
WILL BE \$2.00.

.....

EACH OF THE DOCUMENTS IS SIGNED BY AN EMPLOYEE. HOWEVER, NO OFFICIAL OF THE APPLICANT HAS COUNTERSIGNED THE DOCUMENTS NOR DOES THE SIGNATURE OF THE COLLECTOR OF THE INITIATION FEE APPEAR ON ANY OF THE DOCUMENTS. THE APPLICANT ALSO FILED A DOCUMENT HEADED "LIST OF MEMBERS". THIS DOCUMENT CONTAINS A PRINTED LIST OF PERSONS CLAIMED BY THE APPLICANT AS MEMBERS AND OPPOSITE THE NAME OF EACH PERSON THERE APPEARS AN INITIAL.

3. AT THE PRE-HEARING VOTE MEETING THE INTERVENER OBJECTED TO THE FORM OF THE APPLICANT'S MEMBERSHIP EVIDENCE ESPECIALLY IN VIEW OF THE STATEMENT APPEARING IN FORM 8 WHICH WAS FILED BY THE APPLICANT IN SUPPORT OF ITS MEMBERSHIP EVIDENCE. THE RELEVANT STATEMENT READS AS FOLLOWS:

... I STATE THAT THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS OR OTHER ACKNOWLEDGMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES ARE THE PERSONS WHO ACTUALLY COLLECTED THE MONEYS PAID ON ACCOUNT OF DUES OR INITIATION FEES AND THAT EACH MEMBER, ON WHOSE BEHALF A RECEIPT OR AN ACKNOWLEDGMENT OF PAYMENT IS SUBMITTED HAS PERSONALLY PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT OR ACKNOWLEDGMENT OF PAYMENT AS COLLECTOR, EXCEPT IN THE FOLLOWING INSTANCES:

(NO EXCEPTIONS WERE NOTED)

4. AT THE PRE-HEARING VOTE MEETING, COUNSEL FOR THE APPLICANT ADVISED THAT THE INITIALS APPEARING OPPOSITE THE NAMES OF THE PERSONS WHO WERE LISTED ON THE APPLICANT'S LIST OF MEMBERS WERE INITIALS OF THE PERSONS WHO HAD ACTED AS COLLECTOR.

5. SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT DEFINES MEMBERSHIP AS FOLLOWS:

"MEMBER", WHEN USED WITH REFERENCE TO A TRADE UNION, INCLUDES A PERSON WHO,

(1) HAS APPLIED FOR MEMBERSHIP IN THE TRADE UNION, AND

(11) HAS PAID TO THE TRADE UNION ON HIS OWN BEHALF AN AMOUNT OF AT LEAST \$1 IN RESPECT OF INITIATION FEES OR MONTHLY DUES OF THE TRADE UNION,

AND "MEMBERSHIP" HAS A CORRESPONDING MEANING;

6. THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT IN THIS CASE DOES NOT CONSIST OF APPLICATION FOR MEMBERSHIP CARDS BUT IS MERELY A CERTIFICATE SIGNED BY THE PERSON PURPORTING TO BE A MEMBER WHEREIN THE PERSON STATES THAT HE IS A MEMBER AND HAS PAID AN INITIATION FEE AND FURTHER AGREES TO PAY MONTHLY DUES. THERE IS NOTHING FROM THE APPLICANT WHICH VERIFIES THE STATEMENT MADE BY THE EMPLOYEE AND THE CERTIFICATE IS NOT A CERTIFICATE OF MEMBERSHIP OF THE APPLICANT CERTIFIED BY ONE OF THE APPLICANT'S OFFICERS. AGAIN, WHILE THE PERSON PURPORTING TO BE A MEMBER CLAIMS THAT HE HAS PAID \$1.00, THERE IS NO RECEIPT FROM THE APPLICANT ACKNOWLEDGED SUCH PAYMENT NOR IS THE COLLECTOR OF SUCH PAYMENT IDENTIFIED.

7. FINALLY, SINCE THE NAME OF THE COLLECTOR DOES NOT APPEAR ON THE FACE OF THE DOCUMENTARY EVIDENCE FILED BY THE APPLICANT, THE STATEMENT CONTAINED IN ITEM 3 OF FORM 8 SUBMITTED BY THE APPLICANT, IF NOT MEANINGLESS, IS PATENTLY UNTRUE.

8. IN VIEW OF THE FACTS SET OUT ABOVE AND THE REQUIREMENTS OF THE LABOUR RELATIONS ACT WE FIND THAT THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IS ENTIRELY UNSATISFACTORY AND WE ARE ACCORDINGLY UNABLE TO ACCEPT SUCH EVIDENCE AS PROOF OF MEMBERSHIP IN THE APPLICANT.

9. ACCORDINGLY, IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF THE APPLICANT AND THE RECORDS OF THE RESPONDENT THAT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

10. THE APPLICATION OF THE APPLICANT IS THEREFORE DISMISSED.

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16. THE MATTER IS REFERRED TO THE REGISTRAR.

1629-71-M: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LIVINGSTON TRANSPORTATION LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

DECISION OF THE BOARD: OCTOBER 25, 1972.

1. THE RESPONDENT BY LETTER DATED JUNE 30, 1972 CHALLENGED THE RULING MADE BY THE EXAMINER WHEREIN THE EXAMINER DENIED THE RESPONDENT THE OPPORTUNITY OF ASKING THE FOLLOWING QUESTION OF MR. WILLIAM COLLINS: "ON YOUR TERMINATION ON FEBRUARY 4, 1972 DID YOU INTEND TO DISCONTINUE ANY RELATIONSHIP WITH THE COMPANY AS AN EMPLOYEE?"

2. SUBSTANTIALLY THE SAME QUESTION WAS PUT TO MR. COLLINS WHEN HE WAS ASKED THE QUESTIONS: "WHEN YOU GAVE NOTICE DID YOU INTEND TO CHANGE YOUR RELATIONSHIP WITH THE COMPANY? IF SO, IN WHAT WAY?" IN REPLY TO THE LATTER QUESTIONS MR. COLLINS INDICATED THAT HE DID NOT UNDERSTAND WHAT WAS MEANT BY A CHANGE IN HIS RELATIONSHIP.

3. THE RESPONDENT HAS REQUESTED THE BOARD TO RULE ON ITS RIGHT TO PUT THE FIRST QUESTION TO MR. COLLINS.

4. WHILE AN ANSWER TO THE QUESTION WHICH THE RESPONDENT SEEKS TO ASK MR. COLLINS MAY WELL CALL FOR A SUBJECTIVE OPINION WHICH MIGHT HAVE LITTLE OR NO PROBATIVE VALUE, WE ARE OF THE VIEW THAT THE PARTIES ARE ENTITLED TO CROSS-EXAMINE MR. COLLINS ON ANY MATTER WHICH IS WITHIN THE PURVIEW OF THE EXAMINER'S INQUIRY. ACCORDINGLY, WE FIND THAT THE RESPONDENT OUGHT TO BE ENTITLED TO PUT THE ABOVE QUESTION TO MR. COLLINS AND TO PURSUE ANY ANSWERS WHICH RELATE TO THAT QUESTION BY MEANS OF FURTHER CROSS-EXAMINATION, IF REQUIRED.

5. THE EXAMINER IS ACCORDINGLY DIRECTED TO RECONVENE A MEETING OF THE PARTIES IN ORDER TO AFFORD THE RESPONDENT THE OPPORTUNITY WHICH WAS DENIED THE RESPONDENT IN THIS CASE.

6. THE RESPONDENT, HOWEVER, ALSO ASKED FOR A RULING ON WHETHER THE RESPONDENT SHOULD HAVE BEEN PERMITTED TO ASK MR. COLLINS "WHETHER OR NOT A THREAT MADE TO MR. COLLINS WAS MADE BY ANY PERSONS KNOWN TO HIM TO BE BROKERS." ALTHOUGH THIS QUESTION MAY BE PROPERLY PUT AT A HEARING BEFORE THE BOARD IF A PROPER FOUNDATION WERE LAID BY THE FILING OF CHARGES OF IMPROPER OR IRREGULAR CONDUCT (SEE SECTION 47 OF THE BOARD'S RULES OF PROCEDURE) THIS QUESTION IS NOT A PROPER QUESTION WHICH RELATES TO THE EXAMINER'S INQUIRY INTO THE DUTIES AND RESPONSIBILITIES AND EMPLOYMENT STATUS OF MR. COLLINS OR ANY OF THE DISPUTED PERSONS. THE BOARD ACCORDINGLY SUPPORTS THE EXAMINER'S RULING IN THIS CASE THAT THE RESPONDENT SHOULD NOT BE PERMITTED TO PURSUE THIS LINE OF QUESTIONING.

2162-72-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 183 AFFILIATED WITH S.E.I.U., A.F. of L., C.I.O., C.L.C. (APPLICANT) v. ROBERT CRUIKSHANK CLEANING CONTRACTORS LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J.E.C. ROBINSON, Q.C.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER P. J. O'KEEFE:
OCTOBER 25, 1972.

...

2. AS REGARDS THE DESCRIPTION OF THE BARGAINING UNIT, THE SAID REPORT DISCLOSES THAT THE PARTIES AGREE THAT IT SHOULD BE DEFINED IN TERMS OF "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD".

3. THE INITIAL DISPUTE THAT NOW ARISES BETWEEN THE PARTIES IS WHETHER FOUR EMPLOYEE-STUDENTS ARE INCLUDED OR EXCLUDED FROM THE PROPOSED BARGAINING UNIT. THE APPLICANT TAKES THE POSITION THAT AS THESE PERSONS OCCUPIED THE CLASSIFICATION OF "STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD" ON JUNE 21, 1972, THE DATE OF THE FILING OF THIS APPLICATION, THEY FALL WITHIN THE SPECIFIC EXCLUSION FROM THE AGREED UPON BARGAINING UNIT AS DEFINED ABOVE. THE RESPONDENT, ON THE OTHER HAND, SUBMITS THAT THESE PERSONS, ALTHOUGH THEY ATTEND SCHOOL DURING THE SCHOOL YEAR, NEVERTHELESS ARE "PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK" DURING THAT PERIOD AND THAT IT WAS NEVER THE INTENTION TO EXCLUDE PERSONS EMPLOYED IN THIS DUAL CAPACITY.

4. THESE POSITIONS THEREFORE CLEARLY REFLECT THE FUTILITY OF GRANTING THE BARGAINING UNIT IN THE TERMS PROPOSED, PARTICULARLY IN RELATION TO THE PART TIME STUDENT EMPLOYEES WHO AS OF THE DATE OF THE APPLICATION ARE SIMULTANEOUSLY EMPLOYED DURING THE PERIOD OF SCHOOL VACATIONS. ALTHOUGH THE BOARD MAY HAVE INDICATED TO THE PARTIES THAT IT WAS PREPARED TO ACCEPT THE PROPOSED BARGAINING UNIT AS AGREED TO AT THE INITIAL HEARING OF THIS MATTER, WE HAVE NOT RECONSIDERED OUR DECISION IN THIS REGARD AND WE DENY GRANTING THE BARGAINING UNIT AS PROPOSED. IF AUTHORITY IS REQUIRED FOR THE PROPRIETY OF OUR ACTIONS IN THIS REGARD, SEE THE REXWOOD PRODUCTS LIMITED CASE OLRB M.R. NOVEMBER 1968 P. 819 AT PAGE 821).

5. THE BOARD THEREFORE IN THESE CIRCUMSTANCES, FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. HAVING REGARD TO THE AGREEMENT OF THE PARTIES THAT THE FOUR EMPLOYEES ARE "STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD", WE THEREFORE FIND THAT THEY ARE INCLUDED IN THE BARGAINING UNIT AS DEFINED ABOVE.

...

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: OCTOBER 25, 1972.

HAVING REGARD TO MY DECISION DISMISSING THE APPLICATION IN THE FULL TIME UNIT (BOARD FILE NO. 2163-72-R) AS A RESULT OF MY FINDING OF NON-PAY BY THE EMPLOYEE MRS. HEAD, AND THE RESULTANT INACCURACY OF THE FORM 8 SUBMITTED BY THE APPLICANT UNION, I WOULD ACCORDINGLY FIND THAT SINCE THIS APPLICATION AND THAT IN THE FULL TIME UNIT WAS ONE AND THE SAME ORGANIZATIONAL CAMPAIGN, THIS APPLICATION SHOULD ALSO BE DISMISSED.

1791-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE WEL-
LAND COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT) V. EM-
PLOYEE (OBJECTOR).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS A. MAIN AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: T. ARMSTRONG, W. A. ACTON AND A. BLANCHET FOR THE APPLICANT; B. W. BINNING AND P. FORESTELL, Q.C. FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER A. MAIN: OCTOBER 25, 1972.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT SEEKS TO BECOME THE BARGAINING AGENT FOR A GROUP OF PERSONS WHO WORK AS OFFICE AND CLERICAL STAFF FOR NOT MORE THAN 24 HOURS PER WEEK. THE QUESTION HAS ARISEN AS TO WHETHER THE PERSONS IN QUESTION ARE EMPLOYEES OF THE RESPONDENT OR OF OFFICE OVERLOAD. AN EXAMINER WAS APPOINTED AND THE BOARD HEARD THE REPRESENTATIONS OF COUNSEL WITH RESPECT THERETO TO HIS REPORT.

2. THERE IS NO DOUBT THAT PRIOR TO JANUARY 31, 1972 THE PERSONS WITH WHOM THE APPLICATION IS CONCERNED WERE EMPLOYEES OF THE RESPONDENT. ON JANUARY 11, 1972 THE RESPONDENT ACCEPTED THE TERMS OF AN OFFICE OVERLOAD PROPOSAL TO TRANSFER SCHOOL SECRETARIES TO THE LATTER'S PAYROLL AS AT JANUARY 31, 1972.

3. OFFICE OVERLOAD WERE ADVISED OF THIS APPLICATION BUT TOOK NO PART IN THE PROCEEDINGS.

4. THE DIFFICULT TASK FOR THE BOARD IS TO DETERMINE ON THE EVIDENCE IN THE EXAMINER'S REPORT WHETHER THE RESPONDENT OR OFFICE OVERLOAD IS THE ACTUAL EMPLOYER OF THE SECRETARIES WHOM THE APPLICANT SEEKS TO REPRESENT.

5. THE NATURE OF THE TRANSACTION BETWEEN THE RESPONDENT AND OFFICE OVERLOAD IS INDICATED IN A NUMBER OF DOCUMENTS FILED AS EXHIBITS TO THE EXAMINER'S REPORT. EXHIBIT NO. 7 IS ENTITLED 'MINUTES OF THE BOARD MEET-

ING OF JANUARY 20TH, 1972" (THE BOARD REFERRED TO IS, OF COURSE, THE RESPONDENT). ON PAGE 5 OF THIS EXHIBIT THERE APPEARS THE FOLLOWING:

"THE COMMITTEE OF THE BOARD MET ON MONDAY, JANUARY 10TH, 1972, AND SUBMITTED THE FOLLOWING RECOMMENDATIONS TO THE BOARD:

1. THAT THE BOARD TRANSFER TEMPORARY SCHOOL SECRETARIES (APPROXIMATELY 43) TO THE PAYROLL OF OFFICE OVERLOAD, FOR THE REMAINDER OF THE SCHOOL YEAR, WITH THE REGULAR SCHEDULE OF SCHOOL HOURS AND RATE OF PAY TO APPLY, ALSO THE SAME PERSONNEL TO BE MAINTAINED BY OFFICE OVERLOAD AT EACH SCHOOL. IT IS FURTHER NOTED, THAT OFFICE OVERLOAD GUARANTEES THE PROPOSED RATE UNTIL JUNE 1973. THE BOARD AGREES TO THIS.
2. THAT THE LETTER OF NOTICE TO THE SCHOOL SECRETARIES, AS PREPARED BY MR. PAUL FORESTELL, BE APPROVED AND FORWARDED TO THE SCHOOL SECRETARIES.

MR. PARENT

MR. ROSE

THAT THE RECOMMENDATIONS OF THE COMMITTEE OF THE BOARD MEETING OF JANUARY 10TH, 1972, ITEMS 1 AND 2, BE APPROVED.

CARRIED."

6. FURTHER EVIDENCE IN WRITING OF THE AGREEMENT REACHED BETWEEN THE RESPONDENT AND OFFICE OVERLOAD IS CONTAINED IN A LETTER DATE JANUARY 6, 1972 (EXHIBIT 15) FROM OFFICE OVERLOAD TO THE BUSINESS ADMINISTRATOR FOR THE BOARD AND A LETTER FROM THE LETTER TO THE BRANCH MANAGER OF OFFICE OVERLOAD DATED JANUARY 11, 1972 (EXHIBIT 16). THE LETTERS ARE SET OUT BELOW:

"I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO SUBMIT OFFICE OVERLOAD'S PROPOSAL TO SUPPLY YOUR SCHOOLS WITH TEMPORARY SECRETARIAL HELP. THERE ARE SEVERAL OPTIONS OPEN AND I WILL LIST THESE AS FOLLOWS:

- 1) OFFICE OVERLOAD WOULD REPLACE YOUR EXISTING SECRETARIES WITH OUR STAFF. THE RATE WOULD BE PER HOURS.
- 2) TRANSFER YOUR SECRETARIES TO OUR PAYROLL. THE RATE WOULD BE PER HOUR. OFFICE

OVERLOAD WOULD PAY THE SECRETARY
PER HOURS.

- 3) THIS OPTION IS A COMBINATION OF THE FIRST TWO. IT WOULD INVOLVE TRANSFERRING THOSE SECRETARIES THAT YOU WOULD WISH TO RETAIN TO OUR PAYROLL. THE RATE WOULD BE PER HOUR AND THE SECRETARY WOULD BE PAID \$2.25 PER HOUR. ANY SECRETARIES THAT YOU WOULD NOT WANT TO RETAIN WOULD BE REPLACED WITH OFFICE OVERLOAD STAFF. THE RATE WOULD BE PER HOUR. OVER A PERIOD OF TIME AS OFFICE OVERLOAD REPLACED SECRETARIES THE RATE WOULD BECOME THE PREDOMINANT RATE. THESE RATES ARE GUARANTEED UNTIL FEBRUARY, 1973.

SOME OF THE BENEFITS OF USING OFFICE OVERLOAD ARE:

- 1) OFFICE OVERLOAD DOES THE INTERVIEWING, SCREENING AND TESTING OF EMPLOYEES.
- 2) OFFICE OVERLOAD INCURS PAYROLLING COSTS, FRINGE BENEFIT COSTS IE: UNEMPLOYMENT INSURANCE, CANADA PENSION PLAN, VACATION PAY AND ISSUES T4'S.
- 3) OFFICE OVERLOAD PROVIDES REPLACEMENT HELP.
- 4) THE BOARD SENDS ONE CHEQUE TO OFFICE OVERLOAD AT THE END OF THE MONTH.

BY USING OFFICE OVERLOAD THERE WOULD BE LESS WORK INVOLVED FOR THE BOARD AND REDUCED COSTS. I LOOK FORWARD TO HEARING YOUR DECISION ON THIS PROPOSAL."

"THIS IS TO ADVISE YOU, THAT THE BOARD ACCEPTED YOUR PROPOSAL TO TRANSFER ALL OUR SCHOOL SECRETARIES (APPROXIMATELY 43) TO YOUR PAYROLL, AS AT JANUARY 31ST, 1972. THE AGREED RATE TO BE CHARGED TO THE BOARD WILL BE PER HOUR, WITH THE SCHOOL SECRETARIES RECEIVING THE SAME PAYMENT AS AT PRESENT, NAMELY \$2.25 PER HOUR. OFFICE OVERLOAD SHALL PAY THE COSTS OF ALL STATUTORY BENEFITS. THE BOARD ALSO ACCEPTS YOUR GUARANTEE OF THE ABOVE RATE UNTIL JUNE, 1973.

WE ENCLOSE FOR YOUR USE, A LIST SHOWING NAME OF SCHOOL, NAME AND ADDRESS OF SCHOOL SEC-

RETARY, HOME PHONE NUMBER, AND HOURS ALLOCATED PER YEAR. AS SOON AS POSSIBLE, WE SHALL SEND YOU OTHER PERTINENT INFORMATION, SUCH AS UNEMPLOYMENT INSURANCE NUMBERS ETC.

CONFIRMING OUR CONVERSATION AS OF YESTERDAY, IT IS UNDERSTOOD, THAT YOU WILL BE CONTACTING THE SECRETARIES IMMEDIATELY, INFORMING THEM AS TO OUR AGREEMENT, AND ALSO THE FACT, THAT THEY ARE GUARANTEED EMPLOYMENT TO THE END OF THIS JUNE, AND WILL BE GIVEN THE FIRST OPPORTUNITY TO CONTINUE IN THEIR PRESENT POSITIONS FOR THE FOLLOWING SCHOOL YEAR. PLEASE CONTACT ME IF ANY CLARIFICATION IS NEEDED."

7. FOLLOWING THE DECISION OF THE RESPONDENT TO ENTER INTO AN AGREEMENT WITH OFFICE OVERLOAD, LETTERS IN THE FOLLOWING FORM WERE DESPATCHED TO THE SECRETARIES BY THE RESPONDENT:

"WE ADVISE YOU, THAT AS OF JANUARY 31ST, 1972, ALL SCHOOL SECRETARIAL WORK WILL BE CARRIED OUT THROUGH A CONTRACT WITH OFFICE OVERLOAD.

ACCORDINGLY, YOUR SERVICES WILL NOT BE REQUIRED BY THE BOARD AND NOTICE OF TERMINATION IS HEREBY GIVEN TO YOU BY THE BOARD, EFFECTIVE JANUARY 31ST, 1972.

WE SHOULD FURTHER ADVISE YOU, THAT OFFICE OVERLOAD HAS INFORMED THE BOARD, THAT THEY WILL RETAIN YOUR SERVICES AT THE SAME RATE OF PAY, AT LEAST UNTIL THE END OF THIS SCHOOL YEAR.

WE WOULD LIKE TO EXPRESS OUR APPRECIATION FOR YOUR SERVICES."

8. A LETTER ALSO WENT OUT TO THE SECRETARIES IN OFFICE OVERLOAD DATED JANUARY 12, 1972. THE RELEVANT PORTIONS OF THAT LETTER ARE AS FOLLOWS:

"I WOULD LIKE TO TAKE THIS OPPORTUNITY OF WELCOMING YOU TO OFFICE OVERLOAD. WE LOOK FORWARD TO HAVING YOU WORK FOR US AT THE SCHOOL WHERE YOU ARE PRESENTLY EMPLOYED.

I WANT TO ASSURE YOU THAT THERE WILL BE NO CHANGE IN YOUR HOURS OR YOUR RATE OF PAY. IN SEPTEMBER YOU WILL HAVE THE FIRST OPPORTUNITY TO CONTINUE WORKING AT THE SCHOOL AND WE HOPE THAT YOU WILL DO SO.

I WOULD LIKE TO OUTLINE HOW YOU ARE PAID BY OFFICE OVERLOAD. WE SEND AN INDIVIDUAL TIME SHEET TO THE PRINCIPLE OF THE SCHOOL EVERY WEEK. IT IS RETURNED TO OFFICE OVERLOAD ON FRIDAY. WE PROCESS IT AND YOU WILL RECEIVE YOUR CHEQUE IN THE MAIL AT YOUR HOME THE END OF THE FOLLOWING WEEK."

9. THERE WERE OTHER DOCUMENTS FILED BY THE PARTIES HAVING TO DO WITH THE DAY TO DAY ACTIVITIES OF THE SECRETARIES TO WHICH REFERENCE WILL BE MADE LATER.

10. IN THE REID'S HOLDINGS (BELLEVILLE) LIMITED CASE, (BOARD FILE NO. 1701-71-R DATED JUNE 22, 1971), THE BOARD WAS FACED WITH A PROBLEM OF A SIMILAR NATURE TO THE PRESENT CASE. IN THAT CASE, THE BOARD IN ARRIVING AT A CONCLUSION AS TO WHICH OF TWO COMPANIES WAS THE EMPLOYER CONSIDERED THE FOLLOWING CRITERIA:

- (1) WITH WHOM ARE NEGOTIATIONS CARRIED ON
WITH RESPECT TO (A) WAGES
(B) WORKING CONDITIONS?
- (2) WHO EXERCISES DISCIPLINARY POWERS?
- (3) WHO ACTUALLY DOES THE HIRING?
- (4) WHO CONTROLS THE EMPLOYEES' WORK METHODS?

IT IS ALSO IMPLICIT IN THE REID'S HOLDINGS CASE THAT THE BOARD HAD REGARD FOR THE ACTUAL RATHER THAN THE APPARENT SITUATION.

11. IT IS OF INTEREST TO NOTE THAT SOMEWHAT THE SAME CRITERIA WERE USED BY THE CANADA LABOUR RELATIONS BOARD AND WERE SUBSEQUENTLY APPROVED BY THE FEDERAL COURT OF APPEAL IN RE SEAFARERS' INTERNATIONAL UNION OF CANADA AND KENT LINE LTD., 27 D.L.R. (3D) PART 1, P. 105. THE CASE HAD NOT BEEN REPORTED AT THE TIME OF THE HEARING OF THIS MATTER SO THAT COUNSEL HAD NO OPPORTUNITY TO DEAL WITH IT. WE SIMPLY REMARK THE CASE BECAUSE IT APPEARS TO CONFIRM THE VALIDITY OF THE CRITERIA EMPLOYED BY THIS BOARD IN THE REID'S HOLDINGS CASE (SUPRA). THE QUESTION IN THE KENT LINE LTD. CASE (SUPRA) WAS WHETHER THAT COMPANY WAS THE EMPLOYER OF CERTAIN CREW MEMBERS WHOM THE UNION SOUGHT TO REPRESENT. THE CRITERIA ARE EXPRESSED IN A NEGATIVE FASHION IN THAT THE CONCLUSION IS REACHED THAT KENT LINE LTD. WAS NOT THE EMPLOYER BECAUSE IT DID NOT HAVE CERTAIN POWERS OR EXERCISE CERTAIN FUNCTIONS. THAT IS TO SAY KENT LINE LTD. WAS FOUND NOT TO BE THE EMPLOYER BECAUSE:

- (1) ALTHOUGH IT SCANNED CREW MEMBERS ON BEHALF OF SHIPS OPERATORS, IT DID NOT HIRE THEM. HIRING WAS DONE BY SHIP MASTERS WHO IN TURN WERE NOT SUBJECT TO KENT LINE LTD. IN THIS REGARD.

(2) THE SCALE OF WAGES WAS NOT SET BY KENT LINE LTD.

(3) KENT LINE LTD. HAD NO AUTHORITY TO DISCHARGE THE CREW MEN.

(4) KENT LINE LTD. DID NOT DIRECT THE WORK OF THE CREW MEN.

12. THE COURT ALSO INDICATED THAT IT DID NOT MATTER THAT THE MANNER IN WHICH KENT LINE LTD. CONDUCTED ITS BUSINESS MIGHT HAVE GIVEN THE APPEARANCE THAT IT WAS THE EMPLOYER OF THE CREWS AND THAT TO THE EMPLOYEES IT WAS THE EMPLOYER. THE COURT SAID THAT EVEN IF IT BE ACCEPTED THAT EMPLOYEES COULD AND MAY HAVE BEEN UNDER THAT IMPRESSION, IT IS THE REALITIES OF THE SITUATION AND NOT THE APPEARANCES THAT SHOULD GOVERN.

13. THE DIFFICULTY IN CASES OF THIS NATURE IS NOT SO MUCH IN ARRIVING AT PROPER CRITERIA BUT IN APPLYING THE CRITERIA TO THE PARTICULAR FACTS.

14. THE EVIDENCE THAT IS BEFORE THE BOARD WITH RESPECT TO THE NATURE OF THE CONTRACT GOVERNING THE TRANSACTION BETWEEN THE RESPONDENT AND OFFICE OVERLOAD IS SPARSE AND IS CONTAINED PRINCIPALLY IN THE LETTERS OF JANUARY 6, 1972 AND JANUARY 11, 1972 SET OUT ABOVE. WE PROPOSE NOW TO EXAMINE THE EVIDENCE IN LIGHT OF THE CRITERIA IN AN EFFORT TO DETERMINE WHICH OF THE TWO PARTIES IS THE ACTUAL EMPLOYER OF THE SECRETARIES IN QUESTION.

15. THE LETTER OF PROPOSAL FROM OFFICE OVERLOAD OF JANUARY 6, 1972 SETS OUT THREE POSSIBLE ARRANGEMENTS. THE REPLY OF THE RESPONDENT INDICATES THAT THE BOARD ACCEPTED THE SECOND PROPOSAL BECAUSE THE TERMS OF THAT PROPOSAL ARE SET OUT IN THE FIRST PARAGRAPH OF THE LETTER OF ACCEPTANCE. THE DOCUMENTS DO NOT REVEAL THE OFFICE OVERLOAD CHARGE PER HOUR BUT FIX THE SECRETARIES RATE AT \$2.25 PER HOUR UNTIL JUNE 1973.

16. IT IS EVIDENT FROM THE LETTER OF PROPOSAL THAT THE \$2.25 RATE IS RECOGNIZED AS A RATE DIFFERENT TO THE CUSTOMARY RATES PAID BY OFFICE OVERLOAD TO ITS NORMAL EMPLOYEES. THIS INFERENCE ARISES CLEARLY FROM THE FACT THAT PROPOSAL (1) IN THE LETTER SUGGESTS THE REPLACEMENT OF EXISTING SECRETARIES WITH "OUR STAFF". THE RATE FOR THAT SERVICE IS LEFT IN BLANK. THE BLANK RATE IN THAT INSTANCE WOULD OBVIOUSLY COVER THE EMPLOYEES' RATE PLUS A FEE. SIMILARLY, PROPOSAL (3) INDICATES THAT THERE WOULD BE A DIFFERENCE IN RATES FOR TRANSFERRED SECRETARIES AND THE RATES FOR STRAIGHT REPLACEMENTS DRAWN FROM OFFICE OVERLOAD EMPLOYEES UNDER THAT OPTION.

17. THE PROPOSALS THUS SHOW A DISTINCTION BEING DRAWN BY OFFICE OVERLOAD BETWEEN WHAT WE MAY CALL ITS "REGULAR" EMPLOYEES AND THE SECRETARIES TO BE TRANSFERRED FROM THE RESPONDENT. IN THE CASE OF THE "REGULAR" EMPLOYEE, THE EMPLOYEES' RATE IS OBVIOUSLY A MATTER ARRIVED AT DIRECTLY BETWEEN OFFICE OVERLOAD AND THE EMPLOYEE CONCERNED. IT IS

CLEAR THAT IN THE SECOND PROPOSAL, WHICH, ON THE BASIS OF THE EVIDENCE BEFORE THE BOARD, WAS ACCEPTED BY THE RESPONDENT, THAT THE RATE OF WAGES TO BE PAID THE TRANSFERRED SCHOOL SECRETARIES IS ONE IMPOSED UPON OFFICE OVERLOAD BY THE TERMS OF THAT OPTION. THE RATE WAS, OF COURSE, THE ONE THAT HAD PREVIOUSLY BEEN ARRIVED AT DIRECTLY BETWEEN THE RESPONDENT AND ITS SECRETARIES. OFFICE OVERLOAD AGREED TO CONTINUE THAT PRE-SET RATE UNTIL THE END OF THE AGREEMENT.

18. THE AGREEMENT BETWEEN OFFICE OVERLOAD AND THE RESPONDENT IS NOT, OF COURSE, DIRECTLY BINDING UPON THE SECRETARIES SINCE THEY ARE NOT PARTIES TO IT. THAT IS NOT TO SAY, HOWEVER, THAT THE AGREEMENT DOES NOT EFFECTIVELY CONTROL THE WAGE RATE OF THESE EMPLOYEES UNTIL JUNE OF 1973. THE FIXED CONTRACTUAL RATE IS NOT ONLY A GUARANTEE OF A MINIMUM RATE OFFERED TO THE SECRETARIES IT EQUALLY EMBODIES A COST GUARANTEE TO THE RESPONDENT. THE OPTION AGREED TO LIMITS THE WAGE COST FACTOR IN THE AGREEMENT TO \$2.25 PER HOUR FOR THE TERM OF THE CONTRACT.

19. THE FACT ALSO IS PLAIN ON THE EVIDENCE THAT OFFICE OVERLOAD HAS TAKEN INTO ITS PAYROLL A PREEXISTING CORPS OF TRAINED AND ACCEPTED SECRETARIES WHO ARE PART OF A CONTINUING AND GOING CONCERN IN WHICH THEIR INCUMBANCY WAS AND CONTINUES TO BE OF A PERMANENT NATURE AND WHOSE TASKS WERE AND CONTINUE TO BE OF A SPECIALIZED NATURE. NOTHING IN THE EVIDENCE INDICATES THAT THOSE SECRETARIES ARE TO BE USED FROM OFFICE OVERLOAD FOR ANYTHING BUT THE WORK OF THE RESPONDENT.

20. IT IS SOMEWHAT DIFFICULT TO DEAL WITH THE MATTER OF CONTROL OF THE METHODS USED WHEN DEALING WITH A ROLE SUCH AS THAT OF A SECRETARY BUT IT IS CLEAR THAT FOR WHAT IT IS WORTH IN THE PARTICULAR CONTEXT OF THIS CASE, THAT THE DIRECTION OF THE SECRETARIES IN THE DAILY ROUTINES REMAINED IN THE HANDS OF THE RESPONDENT IN THE PERSONS OF THE SCHOOL PRINCIPALS.

21. THE EVIDENCE INDICATES THAT OFFICE OVERLOAD TOOK OVER ONLY THE MECHANICS OF PAY AND THE NECESSARY STATUTORY DEDUCTIONS FROM THE RESPONDENT. IT WOULD APPEAR FROM A READING OF VARIOUS OTHER DOCUMENTS AND MENOS FILED AS EXHIBITS THAT INSOFAR AS IT WAS PRACTICAL, THE SECRETARIES WERE LEFT IN THE INDIVIDUAL SCHOOLS IN WHICH THEY HAD BEEN EMPLOYED AT THE TIME OF THE CHANGE. WHEN IT BECAME NECESSARY TO FILL VACANCIES, TRANSFERS OF SECRETARIES BETWEEN SCHOOL WERE MADE BY OFFICE OVERLOAD AND REPORTED TO THE RESPONDENT. SUCH MATTERS AS SICK LEAVE AND LEAVE OF ABSENCE ARE ALSO HANDLED BY OFFICE OVERLOAD WITH, AGAIN, A REPORT ON THE MATTER BEING SENT TO THE RESPONDENT. THE JOB POSTING PRACTICES WERE CONTINUED UNCHANGED AFTER THE ADVENT OF OFFICE OVERLOAD.

22. THE BOARD FINDS ON THE TOTALITY OF THE EVIDENCE PLACED BEFORE IT THAT THE ACTUAL EMPLOYER OF THE SECRETARIES FOLLOWING THE COMPLETION OF THE TRANSACTION WITH OFFICE OVERLOAD CONTINUES TO BE THE RESPONDENT.

23. THE BOARD THEREFORE DIRECTS THE RESPONDENT TO FORTHWITH FILE

WITH IT SCHEDULES SHOWING THE SCHOOL SECRETARIES EMPLOYED BY IT AT THE DATE OF THE APPLICATION HEREIN.

DECISION OF BOARD MEMBER J. E. C. ROBINSON: OCTOBER 25, 1972.

1. IN ARRIVING AT A CONCLUSION IN THIS CASE, I MUST INITIALLY COMMENT THAT I FOUND A PAUCITY OF EVIDENCE IN SEVERAL CRITICAL AREAS.
2. ON THE BASIS OF THE EVIDENCE PRESENTED BY THE RESPECTIVE PARTIES, HOWEVER, I AGREE WITH THE ULTIMATE CONCLUSION OF MY COLLEAGUES.
3. I WOULD HAVE REACHED A DIFFERENT CONCLUSION ON THE EVIDENCE PRESENTED, IF THE RESPONDENT SCHOOL BOARD HAD CHOSEN EITHER PROPOSAL (1) OR (3) OF THE THREE PROPOSALS SUBMITTED BY OFFICE OVERLOAD.

2163-72-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 183 AFFILIATED WITH S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. ROBERT CRUIKSHANK CLEANING CONTRACTORS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: M. LEVINSON FOR THE APPLICANT; R. CRUIKSHANK AND H. A. BAPTIE FOR THE RESPONDENT; D. A. EBBS FOR THE OBJECTORS.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER P. J. O'KEEFE: OCTOBER 25, 1972.

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3. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN IT IS ALLEGED THAT DEBORAH HEAD HAD NOT PAID THE SUM OF \$1.00 AS INITIATION FEE FOR MEMBERSHIP IN THE APPLICANT AS APPEARS ON THE FACT OF THE MEMBERSHIP CARDS FILED BY THE APPLICANT ON HER BEHALF.

4. THE EVIDENCE OF MRS. HEAD IS TO THE EFFECT THAT ON THE AFTERNOON OF WEDNESDAY, JUNE 7, 1972, MR. NICHOLLS, AN ORGANIZER WITH THE APPLICANT, ATTENDED AT HER HOME. AFTER HAVING THE PURPOSE OF A UNION EXPLAINED TO HER, MRS. HEAD AGREED TO JOIN THE APPLICANT. THIS CONVERSATION BETWEEN THEM TOOK PLACE IN THE LIVING-ROOM IN THE PRESENCE OF MRS. HEAD'S THREE YEAR OLD DAUGHTER. WHEN MR. NICHOLLS REQUESTED THE DOLLAR PAYMENT, MRS. HEAD TESTIFIED AS FOLLOWS: "I TOLD HIM THAT I JUST HAD WHAT WAS IN THE KID'S BANK. IT WAS ALL PENNIES. HE SAID THAT WOULD DO. I WENT AND GOT THE KID'S BANK AND TOOK OUT SOME OF THE PENNIES. I STARTED TO COUNT THEM AND GOT TO ABOUT FIFTY CENTS. HE SAID IT LOOKED CLOSE ENOUGH TO A DOLLAR TO HIM. WHILE HE WAS MAKING OUT THE RECEIPT HE TOLD MY GIRL TO PUT THE PENNIES BACK IN THE BANK. SHE PUT THEM BACK. I TOLD HIM IF HE WANTED TO COME BACK ON FRIDAY, I WOULD GIVE HIM THE DOLLAR. HE TOLD ME THAT IT WAS ALL RIGHT BUT NOT TO TELL THE OTHER GIRLS."

5. MR. NICHOLLS TESTIFIED THAT WHEN MRS. HEAD INDICATED TO HIM THAT SHE DID NOT HAVE A DOLLAR, HE ASKED HER IF SHE HAD A CHEQUE. UPON RECEIVING A NEGATIVE REPLY, HE INFORMED HER THAT THE CARD WAS NOT VALID WITHOUT SUCH PAYMENT WHEREUPON MRS. HEAD LEFT THE ROOM. SHE RETURNED A FEW MOMENTS LATER CARRYING A PIGGY BANK AND EMPTIED MOST OF THE CONTENTS CONSISTING OF PENNIES ON THE CUSHION OF THE CHESTERFIELD. ACCORDING TO THE WITNESS, THE CHILD BEGAN TO CRY WHEN SHE OBSERVED THE BANK AND CONTINUED TO "MAKE A FUSS" WHILE MR. NICHOLLS PROCEEDED TO PHYSICALLY COUNT OUT ONE HUNDRED PENNIES. HE FURTHER STATED THAT MRS. HEAD DURING THIS TIME WAS ATTEMPTING TO CONSOLE HER DAUGHTER AND TOLD HER "I WILL PAY YOU BACK". UPON COMPLETING HIS COUNT, MR. NICHOLLS STATED THAT HE OBTAINED MRS. HEAD'S SIGNATURE ON THE MEMBERSHIP CARD AND GAVE HER A RECEIPT. AS HE WAS SCOOPING UP THE PENNIES, THE DAUGHTER AGAIN BEGAN TO CRY WHEREUPON MR. NICHOLLS PLACED THE COINS UPON THE COFFEE TABLE DIRECTLY IN FRONT OF THE CHESTERFIELD AND ADVISED THE DAUGHTER - TO QUOTE IN HIS OWN WORDS "HERE MONEY ARE YOUR PENNIES - NOW STOP CRYING." THE WITNESS INDICATED THAT AS FAR AS HE WAS CONCERNED HE HAD PROPERLY COLLECTED THE MONEY FROM MRS. HEAD AND SAW NOTHING WRONG IN LEAVING THE PENNIES WITH THE DAUGHTER IN THESE CIRCUMSTANCES. ACCORDINGLY, HE FELT IT WAS NOT NECESSARY TO DISCLOSE THE MATTER ON THE FORM 8 DECLARATION FILED IN THESE PROCEEDINGS WHICH BEARS HIS SIGNATURE. IN CONTRAST TO MRS. HEAD'S TESTIMONY, HE DENIED BEING ADVISED BY MRS. HEAD THAT SHE WOULD PAY HIM ON FRIDAY NEXT. ALSO, HE DENIES TELLING HER NOT TO INFORM THE OTHER EMPLOYEES OF THE INCIDENT. HE FURTHER STATED THAT HE PERFORMED THE ACTUAL COUNTING OF THE PENNIES AND NOT MRS. HEAD. IN THIS REGARD, HE ASSURED THE BOARD THAT ONE HUNDRED PENNIES WERE IN FACT COUNTED.

6. THE INITIAL QUESTION THEREFORE, TO BE RESOLVED BY THE BOARD IS TO DETERMINE, AS BETWEEN THE TESTIMONY OF MRS. HEAD AND MR. NICHOLLS, WHICH VERSION OF THE TRANSACTION IS TO BE PREFERRED. ON THE ONE HAND, WE HAVE THE EVIDENCE OF MRS. HEAD GIVEN IN A DIRECT AND FRANK MANNER WITH NO APPARENT EXTERIOR MOTIVE. ON THE OTHER HAND WE HAVE THE TESTIMONY OF MR. NICHOLLS A NINETEEN YEAR VETERAN IN THE CONDUCT OF ORGANIZATIONAL CAMPAIGNS WHO IS CONFRONTED FOR THE FIRST TIME WITH A NON-PAY ALLEGATION.

7. IN ASSESSING THE CREDIBILITY OF WITNESSES WHERE THERE IS A DIRECT CONFLICT IN A MATERIAL MANNER IN THEIR TESTIMONY AND WHERE THE BOARD IS UNABLE TO CHOOSE BETWEEN THEM FROM THE MANNER IN WHICH THEY TESTIFIED, THE BOARD HAS, IN THE PAST, GIVEN EFFECT TO THE WRITTEN STATEMENT SIGNED BY THE PURPORTED MEMBER ACKNOWLEDGING PAYMENT OF THE DOLLAR. (SEE THE B.F. GOODRICH CANADA LIMITED CASE [1969] DECEMBER OLRB REP. 1085). APPLYING THIS FACTOR TO THE INSTANT CASE, WE ACCORDINGLY FIND THAT MRS. HEAD MADE THE DOLLAR PAYMENT UNDER THE CIRCUMSTANCES AS OUTLINED IN THE TESTIMONY OF MR. NICHOLLS.

8. ACCORDINGLY, WE FIND THAT THE ACTIONS OF MR. NICHOLLS IN RETURNING THE PENNIES TO THE CHILD UNDER THE MOST UNUSUAL CIRCUMSTANCES AS ATTESTED TO, WERE MOTIVATED OUT OF SYMPATHY AND CONCERN TOWARDS THE CHILD'S PLIGHT. HOWEVER, HIS TESTIMONY NEVERTHELESS REVEALS THAT IT

WAS THE INTENTION OF MRS. HEAD, AT THE TIME SHE EMPTIED OUT THE CONTENTS OF THE BANK, OF PAYING HER DAUGHTER BACK. IN OUR OPINION, WE FIND THAT IT IS NOT NECESSARY FOR THE BOARD TO DETERMINE WHETHER THE APPROPRIATION BY THE MOTHER OF THESE PENNIES IN THE CIRCUMSTANCES AMOUNTED IN LAW TO A LOAN, TRUST OR THEFT SITUATION VIS-A-VIS THE DAUGHTER OR WHETHER MRS. HEAD HAD A SUFFICIENT INTEREST IN THESE MONIES SO AS TO BE IN A POSITION TO BE ABLE TO LEGALLY DISPOSE OF THEM ON HER OWN BEHALF.

9. THE PRINCIPLE TO BE APPLIED IN THE INSTANT CASE IS SET OUT IN THE R.C.A. VICTOR COMPANY LTD. CASE, 53 CLC, PARAGRAPH 17,067 WHERE AT PAGE 1469 THE BOARD STATED:

"...THE BOARD CANNOT ACCEPT AS EVIDENCE OF PAYMENT ANYTHING IN THE NATURE OF A MONETARY CONTRIBUTION FROM A PERSON OTHER THAN AN APPLICANT FOR MEMBERSHIP. THE MONEY PAYMENT CONSTITUTES CONFIRMATORY EVIDENCE OF THE DESIRE OF THE PAYER TO BECOME A MEMBER OF THE TRADE UNION. IF NO FINANCIAL SACRIFICE IS MADE BY THE PERSON HIMSELF, THE ONLY EVIDENCE SUBMITTED ON HIS BEHALF IS A SIGNATURE ON AN APPLICATION CARD WHICH THE BOARD HAS LONG SINCE HELD TO BE INADEQUATE TO ESTABLISH MEMBERSHIP."

10. HAVING REGARD THEREFORE TO ALL OF THE CIRCUMSTANCES AND VIEWING THE TRANSACTION IN ITS ENTIRETY, WE FIND THAT MRS. HEAD HAS NOT, IN FACT, MADE A FINANCIAL SACRIFICE TOWARDS MEMBERSHIP IN THE APPLICANT AND WE ACCORDINGLY DISCOUNT HER CARD. THE QUESTION THAT NOW ARISES IS THE EFFECT TO BE GIVEN TO THE REMAINDER OF THE EVIDENCE OF MEMBERSHIP FILED HEREIN. AS REGARDS THESE MEMBERSHIP CARDS, MR. NICHOLLS IS SHOWN THEREIN AS THE SOLE COLLECTOR AND, IN ADDITION, HIS SIGNATURE APPEARS ON THE FORM 8 DECLARATION ACCOMPANYING THE CARDS.

11. HAVING CAREFULLY ASSESSED THE TESTIMONY OF MR. NICHOLLS, WE ARE SATISFIED THAT THERE WAS NO DELIBERATE ATTEMPT TO MISLEAD THE BOARD, NOR DO WE REGARD HIS ACTIONS, SO LAX AS TO CREATE A CLOUD UPON THE REMAINING EVIDENCE OF MEMBERSHIP SUCH THAT IT MUST BE IMPUGNED. ALTHOUGH THE BOARD HAS SEEN FIT TO SET ASIDE MRS. HEAD'S CARD, WE NEVERTHELESS FIND MR. NICHOLL'S INTERPRETATION OF HIS CONDUCT (IN RETURNING THE PENNIES TO THE CHILD), AS PROPER IN THE CIRCUMSTANCES, TO BE A REASONABLE ONE, ALTHOUGH THE BOARD ITSELF WOULD HAVE REACHED A DIFFERENT CONCLUSION. WE ACCORDINGLY FIND THAT THE FAILURE TO DISCLOSE THIS INFORMATION NOT FATAL TO THE APPLICATION AND WE ACCEPT THE REMAINDER OF THE EVIDENCE OF MEMBERSHIP FILED HEREIN.

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DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C. OCTOBER 25, 1972.

I DISSENT.

I HAVE HAD AN OPPORTUNITY OF READING THE DECISION OF THE MAJORITY, BUT REGRET THAT I AM UNABLE TO REACH THE SAME ULTIMATE CONCLUSIONS, AS DO MY COLLEAGUES. I ACCEPT THE NARRATIVE OF THE EVIDENCE AS SET OUT IN MY COLLEAGUE'S DECISION IN PARAGRAPHS 4 AND 5 THEREOF. THE BALANCE OF THE DECISION OF MY COLLEAGUES IS, IN MY RESPECTFUL OPINION, EXTRANEOUS TO THE MAIN ISSUES BEFORE THE BOARD IN THIS CASE VIZ: (1) HAS MRS. HEAD MADE A FINANCIAL SACRIFICE TOWARDS MEMBERSHIP IN THE APPLICANT (2) IF NOT, WHAT DISPOSITION SHOULD BE MADE OF HER CARD AND/OR OTHER CARDS IN THE APPLICATION AND (3) WHAT DISPOSITION SHOULD BE MADE OF THE APPLICATION AS A WHOLE IF IT IS FOUND THAT THERE HAS BEEN A "NON-PAY" BY MRS. HEAD, AND IN VIEW ALSO OF THE INACCURATE FORM 8 WHICH WOULD ACCOMPANY THE APPLICATION.

INTERWOVEN WITH THE PATHOS, SORROW AND PITY IN MY COLLEAGUES' DECISION, IS THE FINDING IN PARAGRAPH 10 OF SUCH DECISION THAT "MRS. HEAD HAS NOT MADE A FINANCIAL SACRIFICE TOWARDS MEMBERSHIP IN THE APPLICANT." I AGREE WITH SUCH FINDING. THE FINDING THAT HAS BEEN MADE UNANIMOUSLY IS THAT AS REGARDS MRS. HEAD, THERE HAS BEEN A FINDING (IN THE BOARD'S LANGUAGE) OF "NON-PAY". THE DISPOSITION WHICH MY COLLEAGUES MAKE OF THIS APPLICATION SUBSEQUENT TO THE FINDING OF NON-PAY IS, I THINK, MOST ASTOUNDING, AND A RADICAL DEPARTURE FROM THE PREVIOUS JURISPRUDENCE OF THE BOARD ON SUCH SUBJECT.

IT MUST BE REMEMBERED THAT MR. NICHOLLS, AN OFFICIAL OF THE APPLICANT UNION AND A MAN WHO HAS CONDUCTED UNION CAMPAIGNS FOR 19 YEARS, WAS THE SOLE COLLECTOR IN THIS CAMPAIGN AND THE AUTHOR OF FORM 8 IN SUPPORT OF SUCH APPLICATION.

FORM 8, AND IN PARTICULAR PARAGRAPH 3 THEREOF, REQUIRES THE SIGNATORY TO STATE AS FOLLOWS:

"...ON THE BASIS OF MY PERSONAL KNOWLEDGE AND INQUIRIES THAT I HAVE MADE, I STATE THAT THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS OR OTHER ACKNOWLEDGMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES ARE THE PERSONS WHO ACTUALLY COLLECTED THE MONEYS PAID ON ACCOUNT OF DUES OR INITIATION FEES AND THAT EACH MEMBER, ON WHOSE BEHALF A RECEIPT OR AN ACKNOWLEDGMENT OF PAYMENT IS SUBMITTED HAS PERSONALLY PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT OR ACKNOWLEDGMENT OF PAYMENT AS COLLECTOR, EXCEPT IN THE FOLLOWING INSTANCES:"

THERE ARE NO EXCEPTIONS NOTED FOLLOWING THE WORDS "EXCEPT IN THE FOLLOWING INSTANCES", IN THIS CASE. IT IS APPARENT IN VIEW OF THE UNANIMOUS FINDING OF THE BOARD OF "NON-PAY" THAT THE FORM 8 IS INACCURATE, MISLEADING AND UNTRUTHFUL.

IN PARAGRAPH 11 OF ITS DECISION, THE MAJORITY HAVE REMARKED:-
 "ALTHOUGH THE BOARD HAS SEEN FIT TO SET ASIDE MRS. HEAD'S CARD, WE NEVERTHELESS FIND MR. NICHOLLS INTERPRETATION OF HIS CONDUCT (IN RETURNING THE PENNIES TO THE CHILD) AS PROPER IN THE CIRCUMSTANCES, TO BE A REASONABLE ONE, ALTHOUGH THE BOARD ITSELF WOULD HAVE REACHED A DIFFERENT CONCLUSION." WITH GREAT RESPECT TO THE MAJORITY, I AM NOT CONCERNED WITH "MR. NICHOLLS INTERPRETATION OF HIS CONDUCT, "NOR SHOULD THE MAJORITY. THE FACT IS THAT THERE IS A NON-PAY AND THERE HAS BEEN EITHER DISCLOSURE, EXPLANATION OR TRUTHFULNESS ON THE FORM 8.

WHAT IF MR. NICHOLLS' INTERPRETATION OF HIS CONDUCT WITH RESPECT TO ALL APPLICATION CARDS SUBMITTED WAS THAT IT WAS PROPER, EVEN THOUGH THE BOARD ITSELF WOULD HAVE REACHED A DIFFERENT CONCLUSION; WOULD THE MAJORITY SUGGEST THEN THAT THE FORM 8 MET THE BOARD STANDARDS OF ACCURACY, DISCLOSURE AND TRUTHFULNESS? I WOULD HOPE NOT ALTHOUGH THIS IS WHAT WOULD RESULT IF MY COLLEAGUES DISPOSITION IS BROUGHT TO ITS NATURAL CONCLUSION.

INDEED, MR. NICHOLLS INTERPRETATION OF HIS CONDUCT IS NOT IN ISSUE.

SECTION 7(2) OF THE LABOUR RELATIONS ACT IS AS FOLLOWS:-

"(2) IF THE BOARD IS SATISFIED THAT NOT LESS THAN 35 PER CENT AND NOT MORE THAN 65 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION, THE BOARD SHALL, AND IF THE BOARD IS SATISFIED THAT MORE THAN 65 PER CENT OF SUCH EMPLOYEES ARE MEMBERS OF THE TRADE UNION, THE BOARD MAY DIRECT THAT A REPRESENTATION VOTE BE TAKEN."

SECTION 1(1)(J) IS AS FOLLOWS:-

"(J) "MEMBER", WHEN USED WITH REFERENCE TO A TRADE UNION, INCLUDES A PERSON WHO,

(I) HAS APPLIED FOR MEMBERSHIP IN THE TRADE UNION, AND

(II) HAS PAID TO THE TRADE UNION ON HIS OWN BEHALF AN AMOUNT OF AT LEAST \$1 IN RESPECT OF INITIATION FEES OR MONTHLY DUES OF THE TRADE UNION,

AND "MEMBERSHIP" HAS A CORRESPONDING MEANING;"

ON THE BASIS OF THE EVIDENCE BEFORE ME CONSISTING OF APPLICATION CARDS, WHERE AT LEAST ONE IS A NON-PAY, AND AN INACCURATE FORM 8 PREPARED BY AN EXPERIENCED UNION ORGANIZER WHO CONDUCTED THE COMPLETE CAMPAIGN, I AM NOT "SATISFIED", AS I NEED TO BE BY SECTION 7 OF THE ACT, THAT ANY PERCENTAGE OF EMPLOYEES ARE MEMBERS OF THE TRADE UNION AND ACCORDINGLY THE APPLICATION MUST FAIL.

8. MAY I TURN NOW TO THE JURISPRUDENCE CONCERNING FORM

FORM 8, PARAGRAPH 3 IS AS FOLLOWS:-

"....ON THE BASIS OF MY PERSONAL KNOWLEDGE AND INQUIRIES THAT I HAVE MADE, I STATE THAT THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS OR OTHER ACKNOWLEDGMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES ARE THE PERSONS WHO ACTUALLY COLLECTED THE MONEYS PAID ON ACCOUNT OF DUES OR INITIATION FEES AND THAT EACH MEMBER, ON WHOSE BEHALF A RECEIPT OR AN ACKNOWLEDGMENT OF PAYMENT IS SUBMITTED HAS PERSONALLY PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT OR ACKNOWLEDGMENT OF PAYMENT AS COLLECTOR, EXCEPT IN THE FOLLOWING INSTANCES:"

A REVIEW OF THE BOARD'S JURISPRUDENCE CONCERNING FORM 8 IS SET OUT IN COLLINGWOOD SHIPYARDS CASE, OLRB M.R. JUNE '67 246. AT PAGE 250, THE BOARD STATES:

"THE PRINCIPLES RELATING TO THE QUESTION OF DISCLOSURE AND THE REASONS WHY THE BOARD REQUIRES FULL DISCLOSURE HAVE BEEN SPELLED OUT IN MANY OF OUR DECISIONS. THE WEBSTER AIR EQUIPMENT CASE (SUPRA) IS PERHAPS THE LEADING CASE ON THE SUBJECT. IN THAT DECISION THE BOARD HAD THIS TO SAY AT PAGE 1717 (C.L.C.C.):

IT IS OBVIOUSLY A PRACTICAL IMPOSSIBILITY FOR THE BOARD TO INTERVIEW EACH EMPLOYEE ON WHOSE BEHALF DOCUMENTARY EVIDENCE OF MEMBERSHIP IS FILED IN A CERTIFICATION PROCEEDING, IN ORDER TO ASCERTAIN WHETHER HE HAS PERSONALLY SIGNED THE APPLICATION FOR MEMBERSHIP AND WHETHER HE HAS PAID ON HIS OWN BEHALF THE DUES OR FEES WHICH THE RECEIPT ACCOMPANYING THE APPLICATION PURPORTS TO ACKNOWLEDGE, IN ADDITION TO COMPARING THE SIGNATURE ON THE DOCUMENTARY EVIDENCE OF MEMBERSHIP FILED BY THE UNION WITH FACSIMILE SIGNATURES FILED BY THE EMPLOYER,

THE BOARD SEEKS FROM THE REPRESENTATIVE OF THE UNION WHO APPEARS AT THE HEARING ASSURANCES THAT THE PAYMENT OF DUES HAS CONFORMED TO THE BOARD'S POLICY IN THAT REGARD, AND IT REQUIRES SUCH ASSURANCES TO BE BASED ON PERSONAL KNOWLEDGE OF THE FACTS OR ON INQUIRIES FROM THE PERSONS WHO THEMSELVES COLLECTED MONEY. IN THE NORMAL COURSE, THE BOARD ACCEPTS SUCH REPRESENTATIONS AT THEIR FACE VALUE. HOWEVER, SINCE THE BOARD IS COMPELLED TO REPLY TO SUCH AN EXTENT ON EVIDENCE WHICH, BY THE VERY NATURE OF THINGS, IS NOT SUBJECT TO EXAMINATION BY THE PARTIES TO THE PROCEEDINGS (SEE SECTION 72(1) [NOW 83(1)] OF THE LABOUR RELATIONS ACT), IT MUST BE VERY CIRCUMSPECT IN ACCEPTING IT AND IT MUST INSIST ON THE HIGHEST STANDARDS OF INTEGRITY ON THE PART OF THOSE WHO SUBMIT SUCH EVIDENCE. ANY ATTEMPT TO MISLEAD THE BOARD OR ANY FAILURE TO MAKE FULL DISCLOSURE OF ALL MATERIAL FACTS MUST WEIGHT HEAVILY AGAINST AN APPLICANT. IN DEALING WITH THIS SITUATION, THE BOARD HAS MADE A DISTINCTION BETWEEN TWO TYPES OF CASES: (1) WHERE THE ACTION IMPUGNED IS THAT OF A RESPONSIBLE OFFICER OR OFFICIAL OF A UNION, AND (11) WHERE THE ACTION IS THAT OF A SUPPORTER OR CANVASSER ON BEHALF OF AN APPLICANT WHO OCCUPIES AN INFERIOR OFFICE OR NO OFFICE IN THE UNION. INsofar AS THE FIRST OF THESE IS CONCERNED, THE BOARD SAID IN THE RCA VICTOR COMPANY CASE, (1953) CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER, ¶17,067, C.L.C. 76-412, THAT, EVEN WHERE ONLY A SINGLE CARD IS DEFECTIVE AND IT IS SUBMITTED WITH THE KNOWLEDGE OF SUCH RESPONSIBLE OFFICER OR OFFICIAL, "THE BOARD MAY COME TO THE CONCLUSION THAT IT CANNOT PLACE RELIANCE ON ANY OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE UNION". WHERE THE IRREGULARITY RELATES TO EVIDENCE OF MEMBERSHIP PROCURED BY A PERSON OF LESSER RANK IN THE UNION ORGANIZATION, THE BOARD HAS TAKEN THE POSITION THAT THE CARD IN RESPECT OF WHICH THE IRREGULARITY IS ESTABLISHED IS DISALLOWED AND THE WEIGHT TO BE GIVEN TO THE REMAINING EVIDENCE OF MEMBERSHIP WILL DEPEND ON THE NATURE OF THE IRREGULARITY AND THE EXTENT TO WHICH THE OBJECTIONABLE PRACTICE WAS RESORTED TO IN THE SIGNING UP OF MEMBERS.

12. THIS CASE WAS DECIDED AT A TIME WHEN THE ASSURANCES REFERRED TO IN THE PASSAGE QUOTED WERE ORAL ASSURANCES GIVEN THE BOARD AT THE HEARING BY THE APPLICANT'S REPRESENTATIVE.

THIS PRACTICE WAS REPLACED IN 1960 BY THE REQUIRED FILING OF FORM 9 BY THE APPLICANT WHICH, IN 1966, WAS IN TURN REPLACED BY FORM 8.

13. THE REQUIREMENT OF WRITTEN ASSURANCES HAS SERVED TO EMPHASIZE THE CONCERN OF THE BOARD FOR FULL DISCLOSURE AND DECISIONS SINCE THE INTRODUCTION OF THE FORMS REFLECT THIS CONCERN. THUS, IN VALLEY TRANSPORTATION COMPANY LIMITED, O.L.R.B. MONTHLY REPORT, NOVEMBER 1963, P. 448, THE BOARD SAID AT P. 451:

IT NEED HARDLY BE POINTED OUT, THAT IT WOULD BE IMPOSSIBLE FOR THE BOARD TO INTERVIEW EACH AND EVERY EMPLOYEE IN RESPECT OF WHOM EVIDENCE OF MEMBERSHIP IS FILED IN APPLICATIONS FOR CERTIFICATION. FURTHER, WHETHER A PERSON IS OR IS NOT A MEMBER OF A TRADE UNION OR DUES OR DOES NOT DESIRE TO BE REPRESENTED BY A TRADE UNION ARE, EXCEPT IN THE SPECIAL CIRCUMSTANCES WHERE THE BOARD CONSENTS TO THEIR DISCLOSURE, MATTERS WHICH ARE PROTECTED FROM DISCLOSURE BY THE PROVISIONS OF SECTION 83 OF THE ACT. BY THE VERY NATURE OF THINGS, THEREFORE, THE BOARD MUST RELY HEAVILY AND ALMOST ENTIRELY ON DOCUMENTARY EVIDENCE WHEN CONSIDERING THE FACTS RELIED ON AS CONSTITUTING PROOF OF THE UNION'S MEMBERSHIP. AS THE DOCUMENTS SUBMITTED AS EVIDENCE OF MEMBERSHIP ARE NOT SUBJECT TO ANY EXAMINATION BY THE OTHER PARTIES TO THE PROCEEDINGS, THE BOARD MUST BE MOST CIRCUMSPECT AND METICULOUS IN ITS EXAMINATION AND ACCEPTANCE OF THEM. THE BOARD MUST EXPECT AND INSIST THAT PERSONS WHO FILE APPLICATIONS FOR MEMBERSHIP CARDS AND RECEIPTS AND FORM 9 AS EVIDENCE OF MEMBERSHIP, TAKE ALL NECESSARY PRECAUTIONS AND CARE TO ENSURE THAT THE INFORMATION CONTAINED THEREIN IS TRUE AND ACCURATE. THE BOARD IS ENTITLED TO DEMAND THE HIGHEST STANDARDS OF INTEGRITY, DISCLOSURE, AND ACCURACY ON THE PART OF THOSE WHO SUBMIT SUCH EVIDENCE AND WHERE UNDISCLOSED INACCURACIES OF MATERIAL FACTS ARE LATER BROUGHT TO ITS ATTENTION, TO TAKE A STRICT VIEW OF THEM. AS WAS SAID BY THE BOARD IN THE WEBSTER AIR EQUIPMENT COMPANY LTD. CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-59 ¶16,110, AT P. 12,204,

ANY ATTEMPT TO MISLEAD THE BOARD OR ANY FAILURE TO MAKE FULL DISCLOSURE OF ALL MATERIAL FACTS MUST WEIGH HEAVILY AGAINST AN APPLICANT.

AGAIN, IN HOLLAND RIVER GARDENS COMPANY LIMITED, O.L.R.B. MONTHLY REPORT, OCTOBER 1963, P. 364, WE FIND THIS PASSAGE AT P. 366:

IT IS OBVIOUSLY A PRACTICAL IMPOSSIBILITY FOR THE BOARD TO INTERVIEW EACH EMPLOYEE ON WHOSE BEHALF DOCUMENTARY EVIDENCE OF MEMBERSHIP IS FILED IN A CERTIFICATION APPLICATION. THE BOARD ACCORDINGLY MUST PLACE HEAVY RELIANCE ON THE STATEMENTS CONTAINED IN FORM 9 WHICH IT ACCEPTS AT FACE VALUE. SINCE THE BOARD IS COMPELLED TO RELY TO SUCH AN EXTENT ON FORM 9 IN CONSIDERING THE ADEQUACY OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT, ANY FAILURE TO MAKE FULL DISCLOSURE OF ALL THE MATERIAL FACTS MUST WEIGH HEAVILY AGAINST THE APPLICANT."

AND AGAIN, IN FRANK LICARI & SONS CASE, APRIL, 1967, THE BOARD STATED:

"...AS HAD BEEN POINTED OUT IN MANY DECISIONS, THE BOARD IS DEPENDENT TO A LARGE EXTENT ON THE DOCUMENTARY EVIDENCE FILED BY THE UNION BECAUSE IT WOULD BE AN IMPOSSIBLE TASK FOR IT TO VERIFY THE MEMBERSHIP EVIDENCE FOR EVERY INDIVIDUAL BY CONDUCTING A PERSONAL INQUIRY. IT IS INCUMBENT, THEREFORE, UPON UNIONS TO BE MOST CIRCUMSPECT WITH THE DOCUMENTARY EVIDENCE THEY FILE AND TO MAKE SURE THAT IT IS ACCURATE IN ALL RESPECTS."

AND AGAIN, IN THE GLOBE AND MAIL LIMITED CASE, 1963, VOL. 2, C.L.C.C., ¶16,290; C.L.S. 76-941;

"...WHILE FORMS 8 AND 9 ARE NOT IN AFFIDAVIT FORM, THE BOARD REGARDS THEM AS IMPORTANT DOCUMENTS AND IF THEY CONTAIN FALSE STATEMENTS OR INACCURATE STATEMENTS RESULTING FROM CARELESSNESS ON THE PART OF THE PERSON SIGNING, THIS MAY WELL WEIGH HEAVILY AGAINST AN APPLICANT."

THE BOARD'S DEPENDENCE ON THE TRUTH AND ACCURACY OF THE DOCUMENTARY EVIDENCE OF MEMBERSHIP INCLUDING THE FORM 8, FILED BY AN APPLICANT, CARRIES WITH IT A CORRESPONDING OBLIGATION ON THE PART OF SUCH APPLICANT TO ENSURE THAT THE EVIDENCE SUBMITTED IS TRUE AND ACCURATE AND DOES NOT MISLEAD THE BOARD. THE BOARD HAS UNANIMOUSLY, IN THE INSTANT CASE, FOUND A NON-PAY; THE RESULTANT CONCLUSION SHOULD BE THEREFORE, THAT THE FORM 8 IS NOT TRUE, NOR ACCURATE AND IT MISLEADS THE BOARD. ACCORDINGLY, THE APPLICATION SHOULD BE DISMISSED. I WOULD DO SO, AS IS THE USUAL PRACTICE OF THE BOARD.

IN PASSING, MAY I SAY THAT IN THE STANLEY STEEL COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY, 1972, WHERE EMPLOYEES HAD VOTED,

BUT THE BALLOTS HAD NOT BEEN COUNTED, THE BOARD IN FINDING THAT THE FORM 8 WAS INACCURATE, DISMISSED THE APPLICATION AND IMPOSED A SIX MONTH BAR UPON ANY RE-APPLICATION BY THE APPLICANT. I MUST COMMENT THAT I SEE LITTLE REAL DISTINCTION BETWEEN THE EVENTS PRECEDING THE DETERMINATION TO IMPOSE A BAR UPON THE APPLICANT IN THAT CASE AND THE CONDITIONS IN THE PRESENT CASE.

2709-72-U: BRANDON GENERAL CONTRACTORS LTD. (APPLICANT) V. K. W. BUILDING AND CONSTRUCTION TRADES COUNCIL; LEN DUNKEL; BRIAN STRICKLAND; WILLIAM COLLIER; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 804; AND JOHN CHAPE (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: RAY WERRY AND BRIAN BRANDON FOR THE APPLICANT; RAYMOND KOSKIE AND B. GOODMAN FOR THE RESPONDENTS.

DECISION OF THE BOARD: OCTOBER 27, 1972.

1. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 123 OF THE LABOUR RELATIONS ACT.

2. THE RELEVANT EVIDENCE AND THE FINDINGS WHICH THE BOARD IS PREPARED TO MAKE ON THE BASIS OF THE EVIDENCE ADDUCED AT THE HEARING OF THE APPLICATION ARE SET OUT BELOW.

3. THE APPLICANT IS THE GENERAL CONTRACTOR ON THE CONESTOGA COLLEGE OF APPLIED ARTS AND TECHNOLOGY CONSTRUCTION PROJECT IN KITCHENER. THE APPLICANT SUBCONTRACTED THE ELECTRICAL WORK ON THE PROJECT TO KWE ELECTRICAL INCORP. THE APPLICANT ALSO SUBCONTRACTED THE MASONRY WORK TO A. GORGI MASONRY LIMITED AND THE MECHANICAL WORK TO S.E. ROZELL & SONS LIMITED. AS WELL, THE APPLICANT WAS PERFORMING SOME OF THE WORK UNDER ITS CONTRACT USING ITS OWN EMPLOYEES.

4. UP TO AND INCLUDING OCTOBER 6, 1972, THE APPLICANT WAS EMPLOYING TWO CARPENTERS AND A FOREMAN ON THE PROJECT. THE SAID CARPENTERS ARE COVERED BY A CURRENT COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE GRAND RIVER VALLEY DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA ON BEHALF OF LOCAL UNIONS 498, 949, 1940 AND 2173. AS OF OCTOBER 6, 1972, A. GORGI MASONRY LIMITED HAD EIGHT EMPLOYEES WORKING ON THE PROJECT. THE EMPLOYEES OF A. GORGI MASONRY LIMITED ARE COVERED BY A CURRENT COLLECTIVE AGREEMENT BETWEEN THE ONTARIO PROVINCIAL CONFERENCE OF THE BRICKLAYERS, MASONS & PLASTERERS INTERNATIONAL UNION OF AMERICA AND THE ONTARIO FEDERATION OF CONSTRUCTION ASSOCIATION (TRADE BARGAINING COUNCIL BRICKLAYERS) REPRESENTING THE EMPLOYER ASSOCIATIONS AND THEIR MEMBER CONTRACTORS. LOCAL NO. 12 OF THE BRICKLAYERS' UNION WITH JURISDICTION IN KITCHENER AND A. GORGI MASONRY LIMITED ARE BOUND BY THE SAID COLLECTIVE AGREEMENT. AS OF THE

SAME DATE, OCTOBER 6, S. E. ROZELL & SONS LIMITED HAD ABOUT HALF A DOZEN EMPLOYEES WORKING ON THE PROJECT. THE SAID EMPLOYEES ARE COVERED BY A CURRENT COLLECTIVE AGREEMENT BETWEEN LOCAL UNION 527 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA AND THE MECHANICAL CONTRACTORS ASSOCIATION ZONE 7. THE SAID COLLECTIVE AGREEMENT IS BINDING UPON S. E. ROZELL & SONS LIMITED. EMPLOYEES OF KWE ELECTRICAL INCORP. ALSO WERE WORKING ON THE PROJECT. KWE ELECTRICAL INCORP. IS A NON-UNION CONTRACTOR AND NONE OF ITS EMPLOYEES ARE COVERED BY ANY COLLECTIVE AGREEMENT. IT APPEARS FROM THE EVIDENCE THAT THE APPLICANT AND THE OTHER NAMED SUBCONTRACTORS HAD BEEN WORKING ON THE PROJECT FOR SOME PERIOD OF TIME PRIOR TO OCTOBER 6, 1972 AND THAT AS OF THAT DATE NONE OF THEM HAD COMPLETED THEIR RESPECTIVE CONTRACTS.

5. At 3:30 P.M. ON FRIDAY, OCTOBER 6, 1972, TWO OR THREE PERSONS FORMED A PICKET LINE OUTSIDE THE PREMISES OF CONESTOGA COLLEGE OF APPLIED ARTS AND TECHNOLOGY ON DOON VALLEY ROAD IN KITCHENER. THE SAID PERSONS WORE OR CARRIED SIGNS WHICH READ "THIS PROJECT IS UNFAIR". COMMENCING ON THE MORNING OF TUESDAY, OCTOBER 10, 1972 AND ON EVERY WORKING DAY THEREAFTER UP TO THE DATE OF THE BOARD HEARING ON OCTOBER 24, 1972, TWO OR THREE PERSONS WITH IDENTICALLY WORDED SIGNS HAVE PICKETED THE PROJECT, DURING WHAT HAD BEEN THE REGULAR WORKING HOURS. ACCORDING TO THE EVIDENCE OF ROY BELL, THE SUPERINTENDENT OF THE APPLICANT ON THE PROJECT, ONLY ONE OF THE CARPENTERS IN THE APPLICANT'S EMPLOY REPORTED FOR WORK ON THE MORNING OF OCTOBER 10, 1972. BRIAN BRANDON, THE VICE-PRESIDENT OF THE APPLICANT, TESTIFIED THAT THE SAID CARPENTER ONLY WORKED FOR HALF THE DAY AND THEN LEFT THE PROJECT. SINCE OCTOBER 10, NO EMPLOYEES OF THE APPLICANT HAVE REPORTED FOR WORK. THE EVIDENCE OF BELL IS THAT THREE PERSONS IN THE EMPLOY OF A. GORGI MASONRY LIMITED, WHO PRIOR TO THAT DATE HAD BEEN WORKING ON THE PROJECT, REPORTED AT THE PROJECT ON THE MORNING OF OCTOBER 10, BUT PROMPTLY LEFT THE PROJECT AND DID NOT DO ANY WORK ON THAT DAY. RALPH GORGI, AN ESTIMATOR IN THE EMPLOY OF THE COMPANY, TESTIFIED THAT NONE OF THE EMPLOYEES OF A. GORGI MASONRY LIMITED WORKED ON THE PROJECT ON OCTOBER 10 OR AT ANY TIME SINCE THAT DATE ALTHOUGH THE COMPANY WANTED ITS EMPLOYEES TO CONTINUE WORKING. BELL TESTIFIED THAT ONE PLUMBER CAME TO THE PROJECT BUT DID NOT WORK AND LEFT THE PROJECT. THE DATE ON WHICH THE PLUMBER REPORTED FOR WORK IS UNCERTAIN FROM BELL'S TESTIMONY. JOSEPH McMULLEN, AN ESTIMATOR AND SUPERVISOR IN THE EMPLOY OF S.E. ROZELL & SONS LIMITED, TESTIFIED THAT HE HAD DISPATCHED A NUMBER OF PLUMBERS TO WORK ON THE PROJECT ON OCTOBER 10, 1972, BUT THAT NONE OF THEM HAD WORKED ON THAT DAY. HE FURTHER TESTIFIED THAT FOLLOWING DISCUSSIONS WITH THE BUSINESS REPRESENTATIVE OF LOCAL 527 OF THE PLUMBERS' UNION, THE COMPANY WAS PERMITTED BY THE UNION TO UNLOAD TWO PIECES OF MECHANICAL EQUIPMENT ON THE JOB SITE ON OCTOBER 20, 1972 USING PLUMBERS TO DO THE UNLOADING WORK, BUT THAT THIS WAS THE ONLY WORK THAT THE PLUMBERS IN THE EMPLOY OF S.E. ROZELL & SONS LIMITED HAVE PERFORMED SINCE OCTOBER 6, 1972. ONLY THE EMPLOYEES OF KWE ELECTRICAL INCORP. WORKED ON OCTOBER 10, 1972. SINCE THAT DATE, NO WORK HAS BEEN PERFORMED BY THE EMPLOYEES OF ANY OF THE CONTRACTORS ON THE CONESTOGA PROJECT.

6. THE EVIDENCE OF BRIAN BRANDON IS THAT HE WAS REQUESTED BY WILLIAM COLLIER, THE BUSINESS AGENT OF LOCAL 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, TO MEET WITH HIM IN THE UNION'S OFFICES ON THE AFTERNOON OF FRIDAY, OCTOBER 13, 1972. BRANDON, BELL AND COLLIER WERE IN ATTENDANCE AT THE MEETING. THE UNDISPUTED EVIDENCE OF BRANDON IS THAT COLLIER ADVISED HIM THAT KWE ELECTRICAL INCORP. WAS A NON-UNION CONTRACTOR AND "TO KICK KWE OFF THE JOB". BRANDON REFUSED TO DO SO. BRANDON TESTIFIED THAT COLLIER FURTHER INFORMED HIM THAT THE UNION WAS GOING TO SUCCEED IN ORGANIZING THE EMPLOYEES OF KWE ELECTRICAL INCORP. SOONER OR LATER. ACCORDING TO BRANDON'S EVIDENCE, COLLIER ADMITTED THAT HE HAD TRIED TO ORGANIZE KWE'S EMPLOYEES ON THE CONESTOGA PROJECT. APPARENTLY HIS EFFORTS WERE UNSUCCESSFUL. BELL'S EVIDENCE RELATING TO THIS MEETING LARGELY CORROBORATES THAT OF BRANDON. BRANDON TESTIFIED THAT HE AND BELL ATTENDED A FURTHER MEETING AT THE UNION HALL ON OCTOBER 17, 1972, AT WHICH BRIAN STRICKLAND, THE BUSINESS AGENT OF LOCAL 12 OF THE BRICKLAYERS' UNION WAS IN ATTENDANCE AS WELL AS COLLIER. BOTH STRICKLAND AND COLLIER URGED BRANDON TO SIGN A CONFIDENTIAL LETTER BY WHICH BRANDON WOULD GIVE AN UNDERTAKING TO THE RESPONDENT UNION THAT THE APPLICANT WOULD NOT EMPLOY KWE ON ANY FUTURE PROJECTS. BOTH COLLIER AND STRICKLAND ADVISED BRANDON THAT IF HE DID SO, BRANDON WOULD NOT EXPERIENCE ANY FURTHER "LABOUR DIFFICULTIES" ON THE PROJECT. BRANDON'S UNDISPUTED EVIDENCE IS THAT STRICKLAND STATED THAT HE WOULD TAKE THE PICKETS OFF THE PROJECT IF BRANDON SIGNED THE AGREEMENT. BRANDON REFUSED TO SIGN IT. BELL'S EVIDENCE AGAIN LARGELY CORROBORATES THAT OF BRANDON. ACCORDING TO BELL, COLLIER STATED THAT HE WOULD LIKE TO RESOLVE THE DIFFICULTY AND REMOVE THE "LINE". BELL'S EVIDENCE IS THAT HE EXPRESSED THE HOPE THAT THE PICKET LINE WOULD BE REMOVED SO THAT THE APPLICANT COULD GET ON WITH ITS JOB.

7. THE PERSONS WHO ALTERNATED ON THE PICKET LINE FROM OCTOBER 6 ONWARD WERE NOT SPECIFICALLY IDENTIFIED EITHER BY NAME OR THEIR UNION AFFILIATION. IN LIGHT OF ALL OF THE EVIDENCE, HOWEVER, IT WOULD NOT BE UNREASONABLE TO INFER THAT AT LEAST ONE OR MORE OF THE PICKETERS WERE MEMBERS OF THE RESPONDENT TRADE UNION OR EVEN POSSIBLY MEMBERS OF LOCAL 12 OF THE BRICKLAYERS' UNION. BE THAT AS IT MAY, WE ARE NOT PREPARED TO MAKE ANY PARTICULAR FINDING IN THIS REGARD. FURTHER, THE EVIDENCE DOES NOT POSITIVELY ESTABLISH THAT EITHER COLLIER OR STRICKLAND OR BOTH OF THEM WERE RESPONSIBLE FOR THE PICKET LINE BEING ESTABLISHED IN THE FIRST INSTANCE, ALTHOUGH THE EVIDENCE POINTS TO SUCH AN INFERENCE. IN THIS REGARD, WE WOULD MENTION THE TESTIMONY OF BELL THAT HE SAW STRICKLAND TALKING TO THE PICKETERS FOR ABOUT TEN MINUTES ON THE MORNING OF OCTOBER 10. EVEN IF COLLIER AND STRICKLAND DID NOT ACTUALLY AUTHORIZE THE PICKET LINE, WE ARE SATISFIED ON THE EVIDENCE THAT THEY SUPPORTED AND ENCOURAGED ITS CONTINUATION. WE WOULD MENTION HERE THAT HAVING REGARD TO THE PROVISIONS OF SECTION 88(2) OF THE ACT THE THINGS DONE BY COLLIER MUST BE DEEMED TO HAVE BEEN DONE BY THE RESPONDENT TRADE UNION. FURTHER, IN LIGHT OF THE EVIDENCE OF BELL AND BRANDON AS TO THE STATEMENTS MADE BY THE TWO BUSINESS AGENTS AT THEIR MEETINGS ON OCTOBER 13 AND 17, THERE IS NO QUESTION IN OUR MIND THAT EITHER OR

BOTH COLLIER AND STRICKLAND HAVE THE NECESSARY AUTHORITY TO EFFECTIVELY REMOVE THE PICKETS FROM THE PROJECT.

8. IT IS APPARENT FROM THE EVIDENCE THAT THE PURPOSE OF THE PICKET LINE WAS TO COMPEL THE APPLICANT TO REMOVE KWE ELECTRICAL INCORP. FROM THE PROJECT AND TO GIVE THE ELECTRICAL SUBCONTRACT TO A UNION CONTRACTOR. MOREOVER, WE ARE IMPELLED TO CONCLUDE FROM ALL THE EVIDENCE THAT EMPLOYEES OF THE APPLICANT AND EMPLOYEES OF A. GORGI MASONRY LIMITED AND S. E. ROZELL & SONS LIMITED REFUSED TO WORK ON THE PROJECT ON AND AFTER OCTOBER 10, 1972 BECAUSE THEY WERE UNWILLING TO CROSS THE PICKET LINE. WE FIND THAT THIS CONDUCT ON THE PART OF THE EMPLOYEES CONCERNED CONSTITUTED A STRIKE WITHIN THE MEANING OF SECTION 1(1)(M) OF THE ACT. HAVING REGARD TO THE COLLECTIVE AGREEMENTS, WHICH ARE IN EFFECT, COVERING THE EMPLOYEES OF THE APPLICANT AND THE ABOVE-NAMED SUBCONTRACTORS, WE FURTHER FIND THAT THE STRIKE ENGAGED IN BY THE SAID EMPLOYEES ON AND AFTER OCTOBER 10, 1972 IS UNLAWFUL.

9. SECTION 123 OF THE LABOUR RELATIONS ACT READS:

WHERE ON THE COMPLAINT OF AN INTERESTED PERSON, TRADE UNION, COUNCIL OF TRADE UNIONS OR EMPLOYERS' ORGANIZATION THE BOARD IS SATISFIED THAT A TRADE UNION OR COUNCIL OF TRADE UNIONS CALLED OR AUTHORIZED OR THREATENED TO CALL OR AUTHORIZE AN UNLAWFUL STRIKE OR THAT AN OFFICER, OFFICIAL OR AGENT OF A TRADE UNION OR COUNCIL OF TRADE UNIONS COUNSELLED OR PROCURED OR SUPPORTED OR ENCOURAGED AN UNLAWFUL STRIKE OR THREATENED AN UNLAWFUL STRIKE, OR THAT EMPLOYEES ENGAGED IN OR THREATENED TO ENGAGE IN AN UNLAWFUL STRIKE, IT MAY DIRECT WHAT ACTION IF ANY A PERSON, EMPLOYEE, EMPLOYER, EMPLOYERS' ORGANIZATION, TRADE UNION OR COUNCIL OF TRADE UNIONS AND THEIR OFFICERS, OFFICIALS OR AGENTS SHALL DO OR REFRAIN FROM DOING WITH RESPECT TO THE UNLAWFUL STRIKE OR THE THREAT OF AN UNLAWFUL STRIKE.

10. THERE CAN BE NO QUESTION THAT THE APPLICANT, AS THE GENERAL CONTRACTOR ON THE CONESTOGA PROJECT, IS "AN INTERESTED PERSON" ENTITLED TO MAKE THE INSTANT COMPLAINT. WE ARE SATISFIED, MOREOVER, THAT COLLIER AND STRICKLAND, BY THEIR CONDUCT, BOTH SUPPORTED AND ENCOURAGED THE UNLAWFUL STRIKE THAT OCCURRED. WE ACCORDINGLY ARE FURTHER SATISFIED THAT THE PREREQUISITE CONDITIONS TO THE BOARD EXERCISING ITS AUTHORITY UNDER SECTION 123 HAVE BEEN SATISFIED.

11. IN THE RESULT, THE BOARD DEEMS IT ADVISABLE AND HEREBY MAKES THE FOLLOWING DIRECTION:

(1) THAT BRIAN STRICKLAND AND WILLIAM COLLIER AND ANY OTHER OFFICER, OFFICIAL OR AGENT OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL

WORKERS, LOCAL 804 SHALL REFRAIN FROM CALLING OR AUTHORIZING OR COUNSELLING OR PROCURING OR SUPPORTING OR ENCOURAGING AN UNLAWFUL STRIKE ON THE CONESTOGA COLLEGE OF APPLIED ARTS AND TECHNOLOGY CONSTRUCTION PROJECT AT KITCHENER.

- (2) THAT BRIAN STRICKLAND AND WILLIAM COLLIER AND ANY OTHER OFFICER, OFFICIAL OR AGENT OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 804 SHALL REFRAIN FROM INTERFERING IN ANY WAY, INCLUDING THE ESTABLISHMENT OR MAINTENANCE OF A PICKET LINE, WITH THE ENTRANCE OR EXIT OF ANY EMPLOYEES, AGENTS, SUBCONTRACTORS OR SUPPLIERS OF THE APPLICANT OR ANY OTHER PERSON FROM THE CONESTOGA COLLEGE OF APPLIED ARTS AND TECHNOLOGY CONSTRUCTION PROJECT AT KITCHENER.

. . .

2386-72-M: HENDRIK W. HEERINGA (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, C.L.C., ONTARIO HYDRO EMPLOYEES' UNION, LOCAL 1000 (RESPONDENT TRADE UNION) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT EMPLOYER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: THOMAS DUNNE AND GERALD VANDEZANDE FOR THE APPLICANT; E. ROVET FOR THE RESPONDENT TRADE UNION; NO ONE FOR THE RESPONDENT EMPLOYER.

DECISION OF THE BOARD: OCTOBER 27, 1972.

1. THE APPLICANT ON AUGUST 8, 1972 APPLIED TO THE BOARD UNDER SECTION 39 OF THE LABOUR RELATIONS ACT FOR EXEMPTION ON THE GROUNDS OF RELIGIOUS CONVICTION OR BELIEF FROM THE UNION SECURITY PROVISION (ARTICLE 5) OF A COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT TRADE UNION (HEREINAFTER REFERRED TO AS LOCAL 1000) AND THE RESPONDENT EMPLOYER (HEREINAFTER REFERRED TO AS HYDRO).

2. LOCAL 1000 AND HYDRO WERE PARTIES TO A TWO-YEAR COLLECTIVE AGREEMENT WHICH EXPIRED ON MARCH 31, 1972. BY APPLICATION DATED MARCH 22, 1972, LOCAL 1000 REQUESTED THAT THE MINISTER APPOINT A CONCILIATION OFFICER. IN COMPLIANCE WITH THAT REQUEST THE MINISTER APPOINTED A CONCILIATION OFFICER WHO MET WITH THE PARTIES. ON JUNE 6, 1972, THE MINISTER NOTIFIED EACH OF THE PARTIES IN WRITING THAT HE DID NOT CONSIDER IT ADVISABLE TO APPOINT A CONCILIATION BOARD. ON OR AFTER JUNE 21, 1972, THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT COVERED

BY THE EXPIRED COLLECTIVE AGREEMENT COMMENCED TO WITHDRAW THEIR SERVICES FROM HYDRO ON A ROTATING BASIS AND WERE CONTINUING TO DO SO AS OF THE DATE OF THE HEARING OF THIS APPLICATION ON OCTOBER 12, 1972. THERE IS NO DISPUTE THAT THE ACTION OF THE SAID EMPLOYEES CONSTITUTES A STRIKE WITHIN THE MEANING OF SECTION 1(1)(M) OF THE ACT OR THAT THE STRIKE IS LAWFUL.

3. DURING THE PERIOD AFTER THE EXPIRY OF THE COLLECTIVE AGREEMENT ON MARCH 31, 1972, AND INCLUDING THE PERIOD SINCE THE STRIKE COMMENCED ON OR AFTER JUNE 21, 1972, HYDRO CONTINUED TO DEDUCT UNION DUES FROM THE WAGES OF THE BARGAINING UNIT EMPLOYEES, INCLUDING THE APPLICANT, PURSUANT TO ARTICLE 5 OF THE EXPIRED COLLECTIVE AGREEMENT. LOCAL 1000 ACCEPTED THE DUES REMITTED TO IT. ON AUGUST 16, 1972, HOWEVER, HYDRO UNILATERALLY CEASED TO MAKE THE SAID DUES DEDUCTIONS.

4. SECTION 39 OF THE LABOUR RELATIONS ACT READS:

39.-(1) WHERE THE BOARD IS SATISFIED THAT AN EMPLOYEE BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF,

(A) OBJECTS TO JOINING A TRADE UNION; OR

(B) OBJECTS TO THE PAYING OF DUES OR OTHER ASSESSMENTS TO A TRADE UNION,

THE BOARD MAY ORDER THAT THE PROVISIONS OF A COLLECTIVE AGREEMENT OF THE TYPE MENTIONED IN CLAUSE A OF SUBSECTION 1 OF SECTION 38 DO NOT APPLY TO SUCH EMPLOYEE AND THAT THE EMPLOYEE IS NOT REQUIRED TO JOIN THE TRADE UNION, TO BE OR CONTINUE TO BE A MEMBER OF THE TRADE UNION, OR TO PAY ANY DUES, FEES OR ASSESSMENTS TO THE TRADE UNION, PROVIDED THAT AMOUNTS EQUAL TO ANY INITIATION FEES, DUES OR OTHER ASSESSMENTS ARE PAID BY THE EMPLOYEE TO OR ARE REMITTED BY THE EMPLOYER TO A CHARITABLE ORGANIZATION MUTUALLY AGREED UPON BY THE EMPLOYEE AND THE TRADE UNION, BUT IF THE EMPLOYEE AND THE TRADE UNION FAIL TO SO AGREE THEN TO SUCH CHARITABLE ORGANIZATION REGISTERED AS A CHARITABLE ORGANIZATION IN CANADA PART I OF THE INCOME TAX ACT (CANADA) AS MAY BE DESIGNATED BY THE BOARD.

(2) SUBSECTION 1 APPLIES,

(A) SUBJECT TO CLAUSE B, TO EMPLOYEES IN THE EMPLOY OF AN EMPLOYER AT THE TIME A COLLECTIVE AGREEMENT CONTAINING A PROVISION OF THE KIND MENTIONED IN SUBSECTION 1 IS FIRST ENTERED INTO WITH THAT EMPLOYER AND ONLY DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT; AND

- (B) WHERE A COLLECTIVE AGREEMENT IN FORCE BEFORE THE 15TH DAY OF FEBRUARY, 1971 CONTAINS THE PROVISION MENTIONED IN SUBSECTION 1, TO EMPLOYEES IN THE EMPLOY OF THE EMPLOYER ON THE 15TH DAY OF FEBRUARY 1971 AND ONLY DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT,

AND DOES NOT APPLY TO EMPLOYEES WHOSE EMPLOYMENT COMMENCES AFTER THE ENTERING INTO OF THE COLLECTIVE AGREEMENT WHEN CLAUSE A APPLIES, OR ON OR AFTER THE 15TH DAY OF FEBRUARY 1971, WHEN CLAUSE B APPLIES.

5. COUNSEL FOR LOCAL 1000 SUBMITS THAT BY VIRTUE OF SUBSECTION (2) OF SECTION 39 OF THE ACT, THE INSTANT APPLICATION IS UNTIMELY SINCE THE APPLICATION WAS NOT MADE DURING THE LIFE OF THE COLLECTIVE AGREEMENT. COUNSEL SUBMITS THAT THE FACTS OF THE INSTANT CASE ARE DISTINGUISHABLE FROM THE FACTS IN THE VICTORIA HOSPITAL BOARD OF TRUSTEES CASE [1972] OLRB REP. 276 AND IN THOSE CASES IN WHICH THE BOARD FOLLOWED THE REASONING SET OUT IN THE ABOVE CITED CASE (SEE RCA LIMITED CASE [1972] OLRB REP. 570 AND THE ELGIN COUNTY BOARD OF EDUCATION CASE, BOARD FILE NO. 1956-72-M, DECISION DATED AUGUST 17, 1972). MORE SPECIFICALLY, COUNSEL ARGUES THAT THE FINDINGS OF THE BOARD IN THE FOREGOING CASES THAT THE APPLICATIONS WERE TIMELY WERE CONTINGENT ON THE RESTRICTIVE PROVISIONS OF EITHER SECTION 70 OF THE LABOUR RELATIONS ACT OR SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT STILL BEING IN EFFECT AT THE TIME THE APPLICATIONS WERE MADE. COUNSEL NOTED THAT IN THE INSTANT CASE THE APPLICATION WAS MADE WELL IN EXCESS OF THE FOURTEEN DAYS AFTER THE MINISTER HAD NOTIFIED THE PARTIES THAT HE DID NOT CONSIDER IT ADVISABLE TO APPOINT A CONCILIATION BOARD AND THAT ACCORDINGLY THE LIMITATIONS AGAINST THE PARTIES ALTERING ANY OF THE TERMS AND CONDITIONS OF EMPLOYMENT AS PROVIDED FOR IN SECTION 70 OF THE LABOUR RELATIONS ACT HAD CEASED TO BE OPERATIVE. COUNSEL ARGUES THAT IN THESE CIRCUMSTANCES THE REASONING BY WHICH THE BOARD IN THE VICTORIA HOSPITAL BOARD OF TRUSTEES CASE FOUND THE APPLICATION BEFORE IT TO BE TIMELY IS NOT AVAILABLE TO THE APPLICANT IN THE INSTANT CASE.

6. COUNSEL FOR THE APPLICANT CONCEDED THAT THE STATUTORY PERIOD DURING WHICH SECTION 70 REMAINED IN EFFECT HAD EXPIRED PRIOR TO THE DATE OF THE MAKING OF THE INSTANT APPLICATION. COUNSEL ARGUES, HOWEVER, THAT THE PARTIES HAD AGREED TO CONTINUE TO DEDUCT UNION DUES IN COMPLIANCE WITH ARTICLE 5, THE UNION SECURITY PROVISION OF THE EXPIRED COLLECTIVE AGREEMENT. PURSUANT TO THAT AGREEMENT HYDRO HAD CONTINUED TO DEDUCT FROM THE WAGES OF THE BARGAINING UNIT EMPLOYEES, INCLUDING THE APPLICANT, UNION DUES AND HAD REMITTED THE SAME TO THE RESPONDENT. THIS PRACTICE CONTINUED FROM MARCH 31, 1972 UNTIL AUGUST 16, 1972, MORE THAN A WEEK SUBSEQUENT TO THE DATE OF THE MAKING OF THE INSTANT APPLICATION. COUNSEL SUBMITS THAT THE ARGUED CONTINUATION OF THE DEDUCTION OF UNION DUES UNTIL AFTER THE APPLICATION WAS MADE WAS TANTAMOUNT TO THE CONTINUATION IN EFFECT OF SECTION 70 OF THE ACT AS IT RELATES TO THE UNION SECURITY PROVISIONS OF THE COLLECTIVE AGREEMENT. COUNSEL

ARGUED THAT IN THESE CIRCUMSTANCES THE REASONING OF THE BOARD IN THE VICTORIA HOSPITAL BOARD OF TRUSTEES CASE IS APPLICABLE TO THE INSTANT APPLICATION AND THAT ACCORDINGLY THE APPLICATION IS TIMELY.

7. SUBSECTION (1) OF SECTION 70 OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

70.-(1) WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 13 OR SECTION 45 AND NO COLLECTIVE AGREEMENT IS IN OPERATION, NO EMPLOYER SHALL, EXCEPT WITH THE CONSENT OF THE TRADE UNION, ALTER THE RATES OF WAGES OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY, OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES, AND NO TRADE UNION SHALL, EXCEPT WITH THE CONSENT OF THE EMPLOYER, ALTER ANY TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES,

(A) UNTIL THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR UNDER THIS ACT AND,

(I) SEVEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES THE REPORT OF A CONCILIATION BOARD OR MEDIATOR, OR

(II) FOURTEEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE THAT HE DOES NOT CONSIDER IT ADVISABLE TO APPOINT A CONCILIATION BOARD,

AS THE CASE MAY BE; OR

(B) UNTIL THE RIGHT OF THE TRADE UNION TO REPRESENT THE EMPLOYEES HAS BEEN TERMINATED,

WHICHEVER OCCURS FIRST.

8. SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT READS AS FOLLOWS:

10. NOTWITHSTANDING SUBSECTION 1 OF SECTION 70 OF THE LABOUR RELATIONS ACT, WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 13 OR 45 OF THAT ACT BY OR TO A TRADE UNION THAT IS THE BARGAINING AGENT FOR A BARGAINING UNIT OF HOSPITAL EMPLOYEES TO WHICH THIS ACT APPLIES TO OR BY THE EMPLOYER OF SUCH EMPLOYEES AND NO COLLECTIVE AGREEMENT IS IN OPERATION, NO SUCH EMPLOYER SHALL, EXCEPT WITH THE CONSENT OF THE TRADE UNION, ALTER THE RATES OF

WAGES OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES, AND NO SUCH TRADE UNION SHALL, EXCEPT WITH THE CONSENT OF THE EMPLOYER, ALTER ANY TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES, UNTIL THE RIGHT OF THE TRADE UNION TO REPRESENT THE EMPLOYEES HAS BEEN TERMINATED.

9. IN THE VICTORIA HOSPITAL BOARD OF TRUSTEES CASE THE APPLICANT APPLIED FOR RELIEF UNDER SECTION 39 WHEN NO COLLECTIVE AGREEMENT BETWEEN THE TRADE UNION AND EMPLOYER CONCERNED WAS IN OPERATION BUT AT A TIME WHEN THE RESTRICTIONS IMPOSED BY SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT WERE STILL IN EFFECT. IN THE INSTANT CASE, THE APPLICANT APPLIED WHEN NO COLLECTIVE AGREEMENT WAS IN EFFECT BETWEEN HYDRO AND LOCAL 1000. AT THE TIME THE APPLICANT APPLIED, HOWEVER, WELL IN EXCESS OF FOURTEEN DAYS HAD ELAPSED AFTER THE MINISTER HAD RELEASED TO THE PARTIES A NOTICE THAT HE DID NOT CONSIDER IT ADVISABLE TO APPOINT A CONCILIATION BOARD. IN OTHER WORDS, UNLIKE THE POSITION OF THE APPLICANT IN THE VICTORIA HOSPITAL BOARD OF TRUSTEES CASE, THE RESTRICTIONS IMPOSED BY SECTION 70 OF THE LABOUR RELATIONS ACT HAD CEASED TO BE IN EFFECT FOR A PERIOD OF NEARLY SEVEN WEEKS AT THE TIME WHEN THE APPLICANT IN THE INSTANT CASE APPLIED FOR RELIEF UNDER SECTION 39.

10. IT IS CLEAR FROM THE BOARD'S DECISION IN THE VICTORIA HOSPITAL BOARD OF TRUSTEES CASE THAT ITS FINDING THAT THE APPLICATION WAS TIMELY WAS CONTINGENT UPON THE MANDATORY RESTRICTIONS IMPOSED BY SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT BEING IN EFFECT AT THE TIME THE APPLICATION WAS MADE. SINCE THE RESTRICTIONS IMPOSED BY SECTION 70 OF THE LABOUR RELATIONS ACT HAD CEASED TO BE OPERATIVE AT THE TIME THE INSTANT APPLICATION WAS MADE, WE AGREE WITH THE SUBMISSION OF COUNSEL FOR LOCAL 1000 THAT THE REASONING OF THE BOARD IN THE VICTORIA HOSPITAL BOARD OF TRUSTEES CASE IS NOT HERE APPLICABLE. WITH REGARD TO THE SUBMISSION ADVANCED BY COUNSEL FOR THE APPLICANT, HIS ARGUMENT IS PREMISED ON THERE BEING AN AGREEMENT BETWEEN LOCAL 1000 AND HYDRO TO CONTINUE IN EFFECT THE UNION SECURITY PROVISIONS OF THE EXPIRED COLLECTIVE AGREEMENT. THE EVIDENCE, HOWEVER, DOES NOT SUPPORT SUCH A FINDING. DURING THE PERIOD FROM THE EXPIRY OF THE COLLECTIVE AGREEMENT ON MARCH 31, 1972 UNTIL JUNE 21, 1972, HYDRO WAS OBLIGED BY SECTION 70 OF THE ACT TO CONTINUE DEDUCTING UNION DUES FROM THE WAGES OF THE EMPLOYEES CONCERNED. IT WAS ONLY ON JUNE 21, 1972, WHICH WAS FOURTEEN DAYS AFTER THE MINISTER NOTIFIED THE PARTIES THAT HE DID NOT CONSIDER IT ADVISABLE TO APPOINT A CONCILIATION BOARD, THAT HYDRO CEASED TO BE UNDER ANY OBLIGATION TO DEDUCT UNION DUES. NOTWITHSTANDING THIS FACT, HOWEVER, IT APPEARS THAT HYDRO, WITHOUT CONSULTATION WITH LOCAL 1000, CONTINUED TO DEDUCT UNION DUES. THE FACT THAT LOCAL 1000 ACCEPTED FROM HYDRO THE UNION DUES REMITTED TO IT, IN OUR VIEW, CANNOT REASONABLY BE INTERPRETED TO MEAN THAT LOCAL 1000 AND HYDRO AGREED TO THE CONTINUATION IN EFFECT OF ARTICLE 5 OF THE EXPIRED COLLECTIVE AGREEMENT. INDEED, HYDRO'S SUBSE-

QUENT UNILATERAL ACTION IN CEASING TO MAKE FURTHER DUES DEDUCTIONS AFTER AUGUST 16, 1972 LENDS CREDENCE TO THE ABSENCE OF ANY SUCH AGREEMENT. SINCE THE EVIDENCE DOES NOT SUPPORT THE FINDING OF FACT UPON WHICH COUNSEL FOR THE APPLICANT RELIES IN SUPPORT OF HIS ARGUMENT AS TO THE TIMELINESS OF THE APPLICATION, THERE IS NO NEED FOR THE BOARD TO DEAL FURTHER WITH HIS SUBMISSION.

11. HAVING REGARD TO ALL OF THE FOREGOING AND THE FACT THAT NO COLLECTIVE AGREEMENT WAS IN OPERATION BETWEEN LOCAL 1000 AND HYDRO AT THE TIME THE APPLICATION WAS MADE, THE BOARD FINDS THAT THE APPLICATION IS UNTIMELY, THAT IS TO SAY, IT IS NOT AN APPLICATION AUTHORIZED BY SECTION 39 OF THE LABOUR RELATIONS ACT.

12. THE APPLICATION ACCORDINGLY IS DISMISSED.

1067-71-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. HARROW MASONRY (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: W. R. HERRIDGE, Q.C., C. J. VANDERLAAN AND G. VANDEZANDE FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 27, 1972.

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3. THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF A BARGAINING UNIT OF BRICKLAYERS AND BRICKLAYERS' APPRENTICES IN THE COUNTIES OF ESSEX AND KENT. ON THE DATE OF THE MAKING OF THIS APPLICATION, THE RESPONDENT HAD FIVE EMPLOYEES AT WORK IN THE COUNTIES OF ESSEX AND KENT, NAMELY, THREE BRICKLAYERS AND TWO CONSTRUCTION LABOURERS. NO TRADE UNION HELD BARGAINING RIGHTS FOR THESE FIVE EMPLOYEES ON THE DATE OF THE MAKING OF THIS APPLICATION. IN SUCH CIRCUMSTANCES, THE BOARD HAS, IN THE PAST, DETERMINED THAT THE APPROPRIATE BARGAINING UNIT WHICH THE APPLICANT IS ENTITLED TO REPRESENT CONSISTS OF ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES AND ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

4. SUCH BARGAINING UNITS HAVE BEEN DETERMINED BY THE BOARD WITH RESPECT TO THE APPLICANT UNDER THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT. THE APPLICANT IS AWARE OF THE DECISIONS OF THE BOARD WHICH HAVE DETERMINED THE BARGAINING UNITS WHICH THE APPLICANT IS ENTITLED TO REPRESENT. HOWEVER, IN THIS APPLICATION FOR CERTIFICATION, THE APPLICANT ARGUED BEFORE THE BOARD THAT IT WAS ENTITLED TO

REPRESENT A BARGAINING UNIT OF BRICKLAYERS AND BRICKLAYERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAJE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN PURSUANT TO THE PROVISIONS OF SECTION 6(2) OF THE LABOUR RELATIONS ACT.

5. FOR THE PURPOSES OF THE ARGUMENTS ADDRESSED TO THE BOARD, THE RELEVANT PORTIONS OF SECTION 6(2) OF THE LABOUR RELATIONS ACT ARE AS FOLLOWS:

"ANY GROUP OF EMPLOYEES WHO EXERCISE TECHNICAL SKILLS OR WHO ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM THE OTHER EMPLOYEES AND COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT SHALL BE DEEMED BY THE BOARD TO BE A UNIT APPROPRIATE FOR COLLECTIVE BARGAINING IF THE APPLICATION IS MADE BY A TRADE UNION PERTAINING TO SUCH SKILLS OR CRAFT,"

6. IT IS CLEAR THAT IN ORDER FOR A BARGAINING UNIT TO BE DEEMED APPROPRIATE UNDER THE PROVISIONS OF SECTION 6(2) OF THE LABOUR RELATIONS ACT, THREE CONDITIONS MUST BE SATISFIED. THESE THREE CONDITIONS ARE AS FOLLOWS:

- I. THAT THE EMPLOYEES WHOM THE APPLICANT IS SEEKING TO REPRESENT ARE EMPLOYEES WHO EXERCISE TECHNICAL SKILLS OR WHO ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM OTHER EMPLOYEES.
- II. THAT SUCH EMPLOYEES COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT.
- III. THAT THE APPLICATION FOR CERTIFICATION IS MADE BY A TRADE UNION PERTAINING TO SUCH SKILLS OR CRAFT.

7. MR. GERALD VANDEZANDE, THE EXECUTIVE SECRETARY OF THE CHRISTIAN LABOUR ASSOCIATION OF CANADA, GAVE EVIDENCE WITH RESPECT TO THE ORGANIZATION, MEMBERSHIP AND ORGANIZING PRACTICES OF THE APPLICANT AND ALSO GAVE EVIDENCE RESPECTING THE ORGANIZATION OF VARIOUS TRADE UNIONS WITHIN THE CONSTRUCTION INDUSTRY. MR. VANDEZANDE TESTIFIED THAT THE APPLICANT WAS ESTABLISHED AS A TRADE LOCAL UNDER THE PROVISIONS OF ARTICLE 7(B) OF THE CONSTITUTION OF THE CHRISTIAN LABOUR ASSOCIATION OF CANADA. HE INFORMED THE BOARD THAT THE MEMBERSHIP IN THE APPLICANT CON-

SISTS OF PRACTICALLY EVERY CRAFT OR TRADE THAT IS TO BE FOUND IN THE CONSTRUCTION INDUSTRY AND SPECIFICALLY CITED MEMBERSHIP IN THE APPLICANT BY BRICKLAYERS, CARPENTERS, CEMENT FINISHERS, ELECTRICIANS, LABOURERS, PAINTERS, OPERATING ENGINEERS AND GLAZIERS. MR. VANDEZANDE ALSO TESTIFIED THAT THERE WERE NO PERSONS WHO WERE MEMBERS IN THE APPLICANT WHO PERFORMED TRADES OTHER THAN TRADES TO BE FOUND WITHIN CONSTRUCTION INDUSTRY.

8. MR. VANDEZANDE WENT ON TO DESCRIBE HOW THE APPLICANT EXERCISED ITS COLLECTIVE BARGAINING RIGHTS. WHERE BARGAINING RIGHTS ARE OBTAINED ON BEHALF OF ONE TRADE ONLY WITHIN THE APPLICANT, THE BARGAINING COMMITTEE WOULD BE COMPOSED OF ONLY MEMBERS OF THAT TRADE AND THE RATIFICATION OF ANY PROPOSED COLLECTIVE AGREEMENT WOULD BE VOTED UPON ONLY BY MEMBERS OF THAT TRADE. SIMILARLY, WHERE THE APPLICANT HAD BARGAINING RIGHTS FOR MORE THAN ONE TRADE THEN THE COMPOSITION OF THE BARGAINING COMMITTEE WOULD REFLECT THE TRADES FOR WHOM THE APPLICANT HAD SECURED BARGAINING RIGHTS AND THOSE TRADES WOULD BE THE ONLY ONES WHICH WOULD VOTE ON THE RATIFICATION OF ANY PROPOSED COLLECTIVE AGREEMENT SECURED BY THE APPLICANT.

9. THE APPLICANT FILED WITH THE BOARD A LIST OF THE CERTIFICATES ISSUED BY THE BOARD TO THE CHRISTIAN LABOUR ASSOCIATION OF CANADA; THE CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA; AND THE TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA. SUCH LISTS SET FORTH THE TRADES WHICH WERE INCLUDED IN ANY CERTIFICATE ISSUED BY THE BOARD TO THESE TRADE UNIONS. MR. VANDEZANDE TESTIFIED THAT ON SEVERAL OCCASIONS THE BOARD HAD INCLUDED BRICKLAYERS AND BRICKLAYERS' APPRENTICES IN CERTIFICATES ISSUED TO THESE TRADE UNIONS. THE THRUST OF MR. VANDEZANDE'S EVIDENCE WAS THAT ON SOME OCCASIONS THE BOARD HAD ISSUED A CERTIFICATE TO THE APPLICANT COVERING ONE CRAFT AND ON ANOTHER OCCASION HAD ISSUED CERTIFICATES TO THE APPLICANT COVERING MORE THAN ONE CRAFT. HOWEVER, THE WITNESS WAS UNABLE TO POINT TO ANY DECISION OF THE BOARD WHEREIN A BARGAINING UNIT GRANTED IN A CERTIFICATE ISSUED BY THE BOARD TO THESE THREE TRADE UNIONS HAD BEEN DETERMINED WITH REFERENCE TO THE PROVISIONS OF SECTION 6(2) OF THE LABOUR RELATIONS ACT. MR. VANDEZANDE ALSO GAVE EVIDENCE THAT BRICKLAYERS AND BRICKLAYERS' APPRENTICES WERE MEMBERS OF A CRAFT BY REASON OF WHICH THEY WERE DISTINGUISHABLE FROM OTHER EMPLOYEES AND THAT THEY COMMONLY BARGAINED SEPARATELY AND APART FROM OTHER EMPLOYEES IN THE CONSTRUCTION INDUSTRY THROUGH A BRICKLAYERS' UNION WHICH ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT.

10. THE HISTORY OF THE APPLICANT AS INDICATED IN APPLICATIONS FOR CERTIFICATION FILED WITH THE BOARD SHOWS THAT IN THE CORNELIS VANDER STELT CASE, OLRB MONTHLY REPORT, MAY 1964, P. 87 THE BOARD DETERMINED, FOR THE FIRST TIME, THAT THE CHRISTIAN LABOUR ASSOCIATION OF CANADA WAS A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO THE CONSTRUCTION INDUSTRY WITHIN THE MEANING OF SECTION

90(B) [NOW SECTION 106(F)] OF THE LABOUR RELATIONS ACT. FROM 1963 UNTIL THE BEGINNING OF 1967, THE BOARD DETERMINED THAT A BARGAINING UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING WAS ON OCCASIONS AN ALL EMPLOYEE UNIT IN CONSTRUCTION INDUSTRY CASES. HOWEVER, AFTER THE WINTER & SON CASE, OLRB MONTHLY REPORT, FEBRUARY 1967, P. 889, WHERE APPLICATIONS FOR CERTIFICATION WERE MADE UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT BY THE THREE TRADE UNIONS REFERRED TO IN PARAGRAPH NINE HEREIN AND CERTAIN OTHER TRADE UNIONS, SUCH AS, FOR EXAMPLE, THE LUMBER AND SAWMILL WORKERS' LOCAL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, THE BOARD GENERALLY DETERMINED THAT THE BARGAINING UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING WAS THOSE TRADES AT WORK IN A GIVEN GEOGRAPHIC AREA ON THE DATE OF THE MAKING OF THE APPLICATION FOR CERTIFICATION.

11. IT SHOULD ALSO BE POINTED OUT THAT THE BOARD'S APPROACH TO APPROPRIATE BARGAINING UNITS IN THE CONSTRUCTION INDUSTRY AS ILLUSTRATED IN ITS DECISION IN THE WINTER & SON CASE, SUPRA, WAS MADE IN THE LIGHT OF ITS CONCERN FOR AVOIDING JURISDICTIONAL DISPUTES IN THE CONSTRUCTION INDUSTRY. AS STATED ABOVE, THE DETERMINATION OF APPROPRIATE BARGAINING UNITS BY THE BOARD, IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT, AFTER THE WINTER & SON CASE, SUPRA, IN TERMS OF THE TRADES AT WORK IN A GIVEN GEOGRAPHIC AREA ON THE DATE OF THE MAKING OF AN APPLICATION FOR CERTIFICATION WAS NOT LIMITED TO THE THREE TRADE UNIONS REFERRED TO IN PARAGRAPH NINE HEREIN. SIMILAR DETERMINATIONS OF APPROPRIATE BARGAINING UNITS WERE NOT ONLY ALSO APPLIED TO OTHER TRADE UNIONS WHICH DID NOT NORMALLY ORGANIZE ALONG CRAFT LINES BUT WERE; IN ADDITION; APPLIED TO TRADE UNIONS WHICH NORMALLY ORGANIZED ALONG CRAFT LINES, BUT, WHICH HAD SOUGHT IN A PARTICULAR APPLICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT TO EXPAND BEYOND THEIR USUAL CRAFT BARGAINING UNITS AND SOUGHT TO OBTAIN BARGAINING RIGHTS FOR EMPLOYEES WHO EXERCISED SKILLS OR CRAFTS OTHER THAN THOSE SKILLS OR CRAFTS TO WHICH SUCH TRADE UNIONS PERTAIN ACCORDING TO ESTABLISHED TRADE UNION PRACTICE.

12. SINCE 1967, THEREFORE, THE BOARD HAS DETERMINED, WITH RESPECT TO THE THREE TRADE UNIONS REFERRED TO IN PARAGRAPH NINE HEREIN, THAT THE APPROPRIATE BARGAINING UNIT IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT CONSISTS OF THOSE CRAFTS AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION IN A GIVEN GEOGRAPHIC AREA. THE ONLY EXCEPTION TO THIS APPROACH HAS BEEN WHERE SUCH TRADE UNIONS HAVE SOUGHT TO DISPLACE AN INCUMBENT TRADE UNION. IN THE LATTER SITUATION, THE BOARD HAS FOUND THAT THE UNIT REPRESENTED BY THE INCUMBENT TRADE UNION IS THE BARGAINING UNIT APPROPRIATE FOR COLLECTIVE BARGAINING. SEE, FOR EXAMPLE, J. McLEOD & SONS LIMITED CASE. OLRB MONTHLY REPORT, DECEMBER 1969, P. 1107. EARLY, WHERE EMPLOYEES OTHER THAN THOSE FOR WHOM SUCH TRADE UNIONS WERE SEEKING CERTIFICATION WERE COVERED BY SUBSISTING COLLECTIVE AGREEMENTS (AND EVEN WHERE SUCH TRADE UNIONS WERE ENTITLED UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT TO DISPLACE THE INCUMBENT TRADE UNIONS), THE BOARD HAS DETERMINED THAT THE UNIT OF EMPLOYEES APPROPRIATE FOR COL-

LECTIVE BARGAINING CONSISTED OF THE TRADES TO BE FOUND AMONG THE UNREPRESENTED EMPLOYEES AT WORK IN A GIVEN GEOGRAPHIC AREA ON THE DATE OF THE MAKING OF THE APPLICATION. SEE, FOR EXAMPLE, JOHN MCLEOD & SON LIMITED CASE, OLRB MONTHLY REPORT, JULY 1970, P. 462 AND T. & K. DE BOER CONSTRUCTION AND EXCAVATING LIMITED CASE, BOARD FILE NO. 14916-68-R. SUCH BARGAINING UNITS WERE USUALLY STATED BY THE BOARD AS HAVING BEEN DETERMINED PURSUANT TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT. ON OCCASIONS, OF COURSE, AN EMPLOYER WOULD HAVE WORKING IN A GIVEN GEOGRAPHIC AREA ONLY ONE TRADE. NEVERTHELESS, SUCH TRADE WAS DETERMINED BY THE BOARD TO BE AN APPROPRIATE BARGAINING UNIT. AGAIN, SUCH UNIT WAS USUALLY STATED AS HAVING BEEN DETERMINED PURSUANT TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT.

13. COUNSEL FOR THE APPLICANT PRESENTED VERY FULL ARGUMENT TO THE BOARD IN SUPPORT OF THE APPLICANT'S REQUEST TO BE CERTIFIED FOR A UNIT OF BRICKLAYERS AND BRICKLAYERS' APPRENTICES IN THE COUNTIES OF ESSEX AND KENT PURSUANT TO THE PROVISIONS OF SECTION 6(2) OF THE LABOUR RELATIONS ACT. COUNSEL RELIED HEAVILY UPON THE WORDING CONTAINED IN SECTION 106(F) OF THE LABOUR RELATIONS ACT WHICH IN PART STATES, "PERTAINS TO THE CONSTRUCTION INDUSTRY". THIS WORDING CONTAINED IN SECTION 106(F) OF THE LABOUR RELATIONS ACT WAS COMPARED WITH "PERTAINS TO SUCH SKILLS OR CRAFT" AS SET FORTH IN SECTION 6(2) OF THE LABOUR RELATIONS ACT AND AS REFERRED TO IN THIS DECISION IN PARAGRAPHS FIVE AND SIX HEREIN.

14. COUNSEL FOR THE APPLICANT DREW THE BOARD'S ATTENTION TO THE FACT THAT IN THE CORNELIS VANDER STELT CASE, SUPRA, FOUR COLLECTIVE AGREEMENTS AND ONE PENDING APPLICATION FOR CERTIFICATION WERE SUFFICIENT FOR A MAJORITY OF THE BOARD TO CONCLUDE THAT THE CHRISTIAN LABOUR ASSOCIATION OF CANADA WAS A TRADE UNION WITHIN THE MEANING OF SECTION 106(F) [FORMERLY SECTION 90(B)] OF THE LABOUR RELATIONS ACT. THEREFORE, COUNSEL FOR THE APPLICANT REASONED THAT IF SUCH SLIGHT PERFORMANCE BY THE CHRISTIAN LABOUR ASSOCIATION OF CANADA WAS SUFFICIENT TO QUALIFY IT AS A TRADE UNION WITHIN THE MEANING OF SECTION 106(F) OF THE LABOUR RELATIONS ACT, THEN IT FOLLOWED THAT THE APPLICANT IS A TRADE UNION PERTAINING TO THE SKILLS OR CRAFT OF BRICKLAYERS SINCE THE APPLICANT HAD OBTAINED CERTIFICATES WHICH INCLUDED BRICKLAYERS AND BRICKLAYERS' APPRENTICES AND HAD IN FACT BARGAINED ON THEIR BEHALF. COUNSEL ARGUED STRONGLY THAT "PERTAINS" AS USED IN SECTION 6(2) OF THE LABOUR RELATIONS ACT DID NOT MEAN PERTAINS EXCLUSIVELY TO THE CRAFT OF BRICKLAYING AND THERE WAS NO NEED FOR THE APPLICANT TO SATISFY THE BOARD THAT "PERTAINS" WAS TO BE DETERMINED ACCORDING TO ESTABLISHED TRADE UNION PRACTICE.

15. HAVING REGARD TO THE EVIDENCE BEFORE IT, THE BOARD IS SATISFIED THAT BRICKLAYERS AND BRICKLAYERS' APPRENTICES IN THE CONSTRUCTION INDUSTRY ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM OTHER EMPLOYEES AND THAT BRICKLAYERS AND BRICKLAYERS' APPRENTICES COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT. HOWEVER, THIS APPLICATION FOR CERTIFICATION HAS NOT BEEN MADE A TRADE UNION PERTAINING TO SUCH SKILLS OR CRAFT. RATHER,

THE APPLICANT IS A TRADE UNION WHICH PERTAINS GENERALLY TO ALL SKILLS OR CRAFTS TO BE FOUND IN THE CONSTRUCTION INDUSTRY.

16. THE FACT THAT THE BOARD HAS IN THE PAST FOUND THAT CERTAIN EVIDENCE IS SUFFICIENT FOR THE THREE TRADE UNIONS REFERRED TO IN PARAGRAPH NINE HEREIN TO QUALIFY AS TRADE UNIONS WITHIN THE MEANING OF SECTION 106(F) OF THE LABOUR RELATIONS ACT, IS NOT TO BE TAKEN AS ESTABLISHING THAT UNDER THE PROVISIONS OF SECTION 6(2) OF THE LABOUR RELATIONS ACT SUCH TRADE UNIONS ARE, BY VIRTUE OF THE BARGAINING UNITS DETERMINED BY THE BOARD IN THEIR APPLICATIONS FOR CERTIFICATION BEFORE THE BOARD, TRADE UNIONS WHICH PERTAIN TO THE SKILLS OR CRAFT OF BRICKLAYERS AND BRICKLAYERS' APPRENTICES.

17. THE APPLICANT'S OWN PRACTICE OF TAKING INTO MEMBERSHIP EMPLOYEES FROM MORE THAN ONE CRAFT IS CONSISTENT WITH THE BOARD'S BARGAINING UNIT DETERMINATIONS THAT ALL TRADES AT WORK IN A GIVEN GEOGRAPHIC AREA ON THE DATE OF THE MAKING OF THE APPLICATION FOR CERTIFICATION CONSTITUTE AN APPROPRIATE BARGAINING UNIT FOR THE APPLICANT OR OTHER TRADE UNIONS WHICH REPRESENT EMPLOYEES FROM MORE THAN ONE CRAFT.

18. IN THE FIRESTONE TIRE & RUBBER Co. OF CANADA LIMITED CASE, 65 CLLC ¶16,058, THE BOARD CONSIDERED THE THREE CONDITIONS IN SECTION 6(2) OF THE LABOUR RELATIONS ACT REFERRED TO IN PARAGRAPHS FIVE AND SIX HEREIN. IN THE ABOVE CITED CASE, WHICH WAS ADMITTEDLY SET IN THE INDUSTRIAL AS OPPOSED TO THE CONSTRUCTION INDUSTRY CONTEXT, THE BOARD COMMENTED UPON THE WORD "PERTAINING" IN THE THIRD CONDITION IN SECTION 6(2) OF THE LABOUR RELATIONS ACT AND REFERRED TO IN PARAGRAPHS FIVE AND SIX HEREIN. IN THAT CASE, THE BOARD DEPRECATED THE SUGGESTION THAT A BROAD MEANING BE GIVEN TO "PERTAINING" IN THE SAID THIRD CONDITION. THE BOARD WENT ON TO STATE:

"IF THE WORD 'PERTAINING' WERE GIVEN SUCH BROAD MEANING, IT WOULD FOLLOW THAT ANY TRADE UNION, WHICH COULD SHOW THAT IT INCLUDED ELECTRICIANS IN ITS MEMBERSHIP AND THAT ELECTRICIANS WERE INCLUDED IN BARGAINING UNITS FOR WHICH IT BARGAINED, WOULD BE ABLE TO CLAIM CRAFT RIGHTS UNDER THE PROVISIONS OF SUBSECTION 2 OF SECTION 6. IF THIS INTERPRETATION OF THE SUBSECTION WERE ADOPTED, INDUSTRIAL UNIONS, ALMOST WITHOUT EXCEPTION, WOULD BE ABLE TO FRAGMENTIZE EVERY INDUSTRIAL OR COMMERCIAL UNDERTAKING IN WHICH CRAFTSMEN WERE EMPLOYED AND TO ORGANIZE AND BE CERTIFIED FOR ONE CRAFT AT A TIME. SUCH AN APPROACH TO SUBSECTION 2 OF SECTION 6 WOULD BE SO FOREIGN TO THE HISTORY AND PRACTICES OF COLLECTIVE BARGAINING IN

THIS PROVINCE DURING THE LAST TWO DECADES THAT IT WOULD REQUIRE THE CLEAREST LANGUAGE IN THE SUBSECTION TO CONVINCE US THAT THAT IS WHAT THE LEGISLATURE INTENDED."

19. IF THE BOARD WERE TO ADOPT THE BROAD MEANING OF "PERTAINING" URGED UPON IT BY COUNSEL FOR THE APPLICANT, THEN, BY ANALOGY, ALMOST ALL TRADE UNIONS WOULD BE ABLE TO CLAIM UNITS OF EMPLOYEES IN THE CONSTRUCTION INDUSTRY APPROPRIATE FOR COLLECTIVE BARGAINING PURSUANT TO THE PROVISIONS OF SECTION 6(2) OF THE LABOUR RELATIONS ACT. SUCH BARGAINING UNITS WOULD CONSIST OF EMPLOYEES WHO EXERCISE SKILLS OR CRAFTS TO WHICH SUCH TRADE UNIONS DO NOT PERTAIN. IN SUCH CIRCUMSTANCES, THE THIRD CONDITION OF SECTION 6(2) OF THE LABOUR RELATIONS ACT WOULD BE EFFECTIVELY REPEALED. WE DO NOT BELIEVE THAT THIS IS WHAT THE LEGISLATURE INTENDED.

20. THE DECISION IN THIS MATTER DATED OCTOBER 8, 1971, AND THE CERTIFICATE ISSUED THEREUNDER ARE HEREBY REVOKED. THE PARTIES ARE DIRECTED TO SURRENDER THE CERTIFICATE AND COPIES THEREOF TO THE REGISTRAR.

21. HAVING REGARD TO THE FOREGOING CIRCUMSTANCES AND PURSUANT TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, THE BOARD FURTHER FINDS THAT ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES AND ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

22. THE CONSTRUCTION LABOURERS WHO WERE IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, ON THE DATE OF THE MAKING OF THIS APPLICATION, HAVE NOT RECEIVED NOTICE THAT THEY ARE AFFECTED BY THIS APPLICATION FOR CERTIFICATION.

23. ACCORDINGLY, THE REGISTRAR IS DIRECTED TO NOTIFY THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN PARAGRAPH TWENTY-ONE HEREIN OF THIS DECISION AND TO EXTEND THE TERMINAL DATE IN THIS MATTER.

24. THE MATTER IS REFERRED TO THE REGISTRAR.

2408-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. J. R. MENARD LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

DECISION OF THE BOARD: OCTOBER 16, 1972.

1. FOLLOWING THE BOARD'S DECISION DATED SEPTEMBER 19, 1972 IN

THIS MATTER, WHEREIN THE BOARD DIRECTED THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN ITS DECISION, THE RESPONDENT BY LETTER DATED OCTOBER 5, 1972 OBJECTED TO THE SELECTION OF ROGER DESLAURIERS BY THE UNION TO ACT AS ITS SCRUTINEER IN THIS MATTER. THE COMPANY TOOK THE POSITION THAT SINCE MR. DESLAURIERS HAD BEEN DISMISSED HE WAS NO LONGER AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT AND SHOULD THEREFORE NOT ACT AS SCRUTINEER FOR THE REASONS SET OUT IN ITS LETTER.

2. WHILE THE PARTIES ARE ENCOURAGED TO UTILIZE BARGAINING UNIT EMPLOYEES AS SCRUTINEERS IN REPRESENTATION VOTES CONDUCTED BY THE BOARD, IT IS NOT ESSENTIAL THAT THEY DO SO. THE CHOICE OF A SCRUTINEER, WHO IS THE REPRESENTATIVE OF THE PARTY AT THE VOTE, OUGHT TO BE LEFT TO THE DISCRETION OF THE PARTY INVOLVED. THE PARTIES, HOWEVER, SHOULD KEEP IN MIND THAT IF THEIR CHOICE OF SCRUTINEER MAY IMPROPERLY AFFECT THE ABILITY OF THE BARGAINING UNIT EMPLOYEES TO FREELY INDICATE THEIR TRUE WISHES IN THE REPRESENTATION VOTE, THE CHOICE OF SCRUTINEER MIGHT GIVE RISE TO A REQUEST TO HAVE THE REPRESENTATION VOTE SET ASIDE. THE BOARD, HOWEVER, IS NOT PREPARED TO PREJUDGE THIS MATTER AND ACCORDINGLY THE BOARD WILL REFRAIN FROM INTERFERING WITH THE APPLICANT'S SELECTION OF A SCRUTINEER AT THIS TIME.

3. THE REQUEST OF THE RESPONDENT IS THEREFORE DENIED AND THE REGISTRAR IS DIRECTED TO PROCEED WITH THE TAKING OF THE REPRESENTATION VOTE IN THIS MATTER.

2231-72-U: ALFRED COMPTON (COMPLAINANT) v. INTERNATIONAL WOODWORKERS OF AMERICA LOCAL 2-700 (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.J.F. ADE.

APPEARANCES AT THE HEARING: ALFRED W. COMPTON FOR THE COMPLAINANT; M. JAWORSKY, WAYNE HIGHAM, JEFFREY SACK AND STEPHEN WADDELL FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 16, 1972.

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2. THIS IS AN APPLICATION UNDER SECTION 79 WHEREIN THE COMPLAINANT ALLEGES THAT HE HAS BEEN DEALT WITH CONTRARY TO THE PROVISIONS OF SECTION 60 OF THE LABOUR RELATIONS ACT. THAT SECTION PROVIDES AS FOLLOWS:

60. A TRADE UNION OR COUNCIL OF TRADE UNIONS, SO LONG AS IT CONTINUES TO BE ENTITLED TO REPRESENT EMPLOYEES IN A BARGAINING UNIT, SHALL NOT ACT IN A MANNER

THAT IS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH IN THE REPRESENTATION OF ANY OF THE EMPLOYEES IN THE UNIT, WHETHER OR NOT MEMBERS OF THE TRADE UNION OR OF ANY CONSTITUENT UNION OF THE COUNCIL OF TRADE UNIONS, AS THE CASE MAY BE.

3. THE EVIDENCE DISCLOSES THAT THE COMPLAINANT WAS SUSPENDED FOR TEN AND THREE-QUARTER DAYS. ONE OR TWO DAYS AFTER HE WAS SUSPENDED HE RETURNED TO THE PLANT TO PICK UP HIS PAY CHEQUE AND SPOKE TO THE UNION'S SHOP CHAIRMAN, AND ADVISED HIM THAT HE WOULD LIKE TO GRIEVE HIS SUSPENSION. HE WAS TOLD THAT HE COULD NOT GRIEVE AT THAT TIME AND THAT HE SHOULD FILE HIS GRIEVANCE UPON HIS RETURN TO WORK AFTER HIS SUSPENSION. THE COMPLAINANT THEN PHONED THE UNION OFFICE AND SPOKE TO THE UNION BUSINESS REPRESENTATIVE. HE WAS ADVISED BY THE REPRESENTATIVE THAT THE SHOP CHAIRMAN WAS HANDLING THE GRIEVANCES AND THAT THE SHOP CHAIRMAN SHOULD THEREFORE KNOW WHAT HE WAS DOING.

4. THE COMPLAINANT RETURNED TO WORK AFTER HIS SUSPENSION AND FILED A GRIEVANCE AND WAS THEN ADVISED THAT THE GRIEVANCE WAS UNTIMELY. THE MATTER WAS THEN TAKEN TO THE UNION EXECUTIVE WHO DECLINED TO PROCESS THE GRIEVANCE FURTHER BECAUSE THEY RECOGNIZED THAT IT WAS UNTIMELY.

5. THE SHOP CHAIRMAN TESTIFIED THAT BECAUSE SUSPENSIONS ARE USUALLY FOR A SHORT PERIOD, FROM ONE TO THREE DAYS, THAT HE CALCULATED THAT THE COMPLAINANT WOULD HAVE SUFFICIENT TIME UPON HIS RETURN TO FILE THE GRIEVANCE. HIS EVIDENCE INDICATES THAT HE DID NOT PUT HIS MIND TO THE PERIOD OF SUSPENSION WHICH WAS IMPOSED UPON THE COMPLAINANT AND TO THE TIME LIMITS IN THE COLLECTIVE AGREEMENT.

6. IN THIS CASE WE ARE SATISFIED THAT THE UNION DID NOT ACT IN A DISCRIMINATORY MANNER OR IN BAD FAITH, AND THE ONLY ISSUE IS WHETHER THE UNION ACTED IN AN ARBITRARY FASHION. THE GENESIS OF SECTION 60 OF THE LABOUR RELATIONS ACT IS THE WELL-KNOWN CASE OF VACA V. SIPES [1967] 55 LC ¶11,731 386 U.S. 171. IN THAT CASE A STATE COURT HELD A UNION LIABLE FOR DAMAGES RESULTING TO A MEMBER ON THE GROUND THAT THE UNION FAILED TO REPRESENT THE MEMBER FAIRLY BECAUSE OF ITS REFUSAL TO PROCESS THE MEMBER'S DISCHARGE GRIEVANCE THROUGH TO ARBITRATION WHICH WAS THE FINAL STEP OF THE GRIEVANCE MACHINERY. ALTHOUGH THE UNION DID TAKE THE MATTER THROUGH THE GRIEVANCE PROCEDURE THE STATE COURT FOUND THAT THE MEMBER'S GRIEVANCE WAS MERITORIOUS AND AWARDED HIM DAMAGES. THE DECISION WAS ULTIMATELY SET ASIDE BY THE SUPREME COURT OF THE UNITED STATES WHICH LAID DOWN THE DOCTRINE THAT THE UNION OWED A DUTY OF FAIR REPRESENTATION TO ITS MEMBERS, AND FURTHER FOUND THAT A BREACH OF THAT DUTY OCCURS WHERE A UNION'S CONDUCT TOWARDS A MEMBER OF A COLLECTIVE BARGAINING UNIT IS "ARBITRARY, DISCRIMINATORY OR IN BAD FAITH". THAT LANGUAGE HAS OBVIOUSLY BEEN ADOPTED BY THE LEGISLATURE OF THIS PROVINCE IN DRAFTING SECTION 60, AND IN OUR VIEW IN INTERPRETING SECTION 60 IT IS USEFUL TO LOOK AT THE DECISION OF THE SUPREME COURT OF THE UNITED STATES IN VACA V.

SIPES FOR ASSISTANCE IN ASCERTAINING THE PROPER STANDARD FOR DETERMINING LIABILITY. IN THAT CASE THE SUPREME COURT OF THE UNITED STATES DISCUSSED THE RESPONSIBILITY OF A UNION IN ADMINISTERING THE GRIEVANCE AND ARBITRATION MACHINERY AS FOLLOWS AT P. 18,300:

IN ADMINISTERING THE GRIEVANCE AND ARBITRATION MACHINERY AS STATUTORY AGENT OF THE EMPLOYEES, A UNION MUST, IN GOOD FAITH AND IN A NONARBITRARY MANNER, MAKE DECISIONS AS TO THE MERITS OF PARTICULAR GRIEVANCES. SEE HUMPHREY V. MOORE, [48 LC ¶18,670] 375 U. S. 335, 349-350; FORD MOTOR CO. V. HUFFMAN, [23 LC ¶67,505] 345 U. S. 330, 337-339. IN A CASE SUCH AS THIS, WHEN OWENS SUPPLIED THE UNION WITH MEDICAL EVIDENCE SUPPORTING HIS POSITION, THE UNION MIGHT WELL HAVE BREACHED ITS DUTY HAD IT IGNORED OWENS' COMPLAINT OR HAD IT PROCESSED THE GRIEVANCE IN A PERFUNCTORY MANNER. SEE COX, RIGHTS UNDER A LABOR AGREEMENT, 69 HARV. L. REV., AT 632-634.

7. WHEN WE APPLY THOSE CONSIDERATIONS TO THE PRESENT CASE WE FIND THAT WHEN THE SHOP CHAIRMAN REFUSED TO PUT HIS MIND TO THE PARTICULAR MATTER PRESENTED TO HIM AND TO THE TIME LIMITS FOR FILING A GRIEVANCE, THAT HE ACTED IN AN ARBITRARY WAY. HE TREATED THE GRIEVANCE IN A PERFUNCTORY MANNER AND HIS CONDUCT WAS CONFIRMED BY THE BUSINESS REPRESENTATIVE WHO REFUSED TO CONSIDER THE POSITION OF THE COMPLAINANT. WHILE WE RECOGNIZE THAT THE UNION IS NOT A GUARANTOR OR AN INSURER FOR INDIVIDUAL GRIEVANCES, IT IS AT LEAST NECESSARY FOR THE UNION TO CONSIDER THE COMPLAINTS OF AN EMPLOYEE WHEN THEY ARE PLACED BEFORE IT. NO CONSIDERATION WHATSOEVER WAS ATTEMPTED IN THIS CASE AND ACCORDINGLY THE COMPLAINT SUCCEEDS ON THE BASIS THAT THE CONDUCT OF THE UNION IN DISPOSING OF THE COMPLAINANT'S GRIEVANCE WAS ARBITRARY.

8. INSOFAR AS THE QUESTION OF DAMAGES IS CONCERNED COUNSEL FOR THE UNION HAS RELIED ON AN EARLIER CASE OF THIS BOARD AND SUGGESTED THAT THE MATTER BE HEARD IN TWO STAGES - THE FIRST TO DETERMINE THE ISSUE OF LIABILITY AND THE SECOND TO DETERMINE THE ISSUE OF DAMAGES; RUTHERFORD'S DAIRY LIMITED [1972] OLRB REP. 240. IN THAT CASE IT WAS SUGGESTED THAT A COMPLAINT UNDER SECTION 79 OF THE ACT ALLEGING A VIOLATION OF SECTION 60 INVOLVES A TWO STAGE PROCEDURE. THE FIRST STAGE REQUIRES A DETERMINATION THAT THE UNION IS IN AFFECT LIABLE FOR A VIOLATION AND THE SECOND STAGE INVOLVES A DETERMINATION OF THE AMOUNT OF LOSS SUSTAINED. HOWEVER, IN THE RUTHERFORD'S DAIRY LIMITED CASE, SUPRA, AT P. 234, THE BOARD RECOGNIZED THAT THERE ARE SOME CASES WHERE THE TWO ISSUES MAY BE HEARD AT ONE TIME. IN OUR VIEW IT IS PREFERABLE THAT BOTH ISSUES BE DEALT WITH AT THE SAME TIME IF AT ALL POSSIBLE. IT IS ONLY WHEN THE EVIDENCE WITH RESPECT TO LOSS BECOMES SO

COMPLEX OR LENGTHY THAT IT BECOMES PREFERABLE TO HEAR THE CASE IN TWO STAGES. IN OUR VIEW THE PARTIES SHOULD BE PREPARED TO HEAR ALL THE EVIDENCE AT ONE HEARING AND A SPECIAL REQUEST SHOULD BE MADE AT THE VERY OUTSET TO SPLIT THE CASE INTO TWO STAGES IF IT SHOULD APPEAR THAT THE ISSUE OF COMPENSATION WILL BE UNDULY COMPLEX OR LENGTHY.

9. SINCE SECTION 60 IS A NEW SECTION AND THE PROCEDURES UNDER THAT SECTION HAVE NOT BEEN ESTABLISHED, WE ACCEPT THE POSITION TAKEN BY COUNSEL FOR THE RESPONDENT THAT THIS MATTER SHOULD BE HEARD IN TWO STAGES. ACCORDINGLY THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR HEARING FOR THE PURPOSE OF DETERMINING WHETHER THE COMPLAINANT IS ENTITLED TO COMPENSATION.

2577-72-M: JOHN ENTWISTLE CONSTRUCTION LIMITED (EMPLOYER) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1758 (TRADE UNION).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: R. B. POTTER AND J. G. ENTWISTLE FOR THE EMPLOYER; NO ONE FOR THE TRADE UNION.

DECISION OF THE BOARD: OCTOBER 18, 1972.

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2. THE MINISTER HAS REFERRED TO THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 96 OF THE LABOUR RELATIONS ACT, THE QUESTION AS TO WHETHER HE HAS THE AUTHORITY UNDER THE ACT TO APPOINT A CONCILIATION OFFICER. THE EVIDENCE IN THIS CASE ESTABLISHED THAT, FOLLOWING VOLUNTARY RECOGNITION, THE EMPLOYER ENTERED INTO A COLLECTIVE AGREEMENT WITH THE TRADE UNION ON FEBRUARY 11, 1960. THE AGREEMENT PROVIDED THAT IT "SHALL REMAIN IN FORCE UNTIL THE 31ST DAY OF AUGUST, 1961. SHOULD EITHER PARTY HERETO DESIRE TO CHANGE, ADD TO OR AMEND THIS AGREEMENT, THAT PARTY AGREES TO GIVE TO THE OTHER PARTY SIXTY (60) DAYS' WRITTEN NOTICE PRIOR TO THE DATE OF TERMINATION OF THIS AGREEMENT. PROVIDING THAT NO SUCH NOTICE IS GIVEN BY EITHER PARTY, THIS AGREEMENT SHALL CONTINUE IN FORCE FOR AN ADDITIONAL YEAR FROM THE 31ST DAY OF AUGUST 1961, OR SO ON FROM YEAR TO YEAR."

3. NEITHER PARTY SERVED NOTICE ON THE OTHER TO AMEND THE COLLECTIVE AGREEMENT WHICH REMAINED IN FORCE UNTIL THE 31ST DAY OF AUGUST, 1961 AND IN PARTICULAR NO NOTICE TO BARGAIN WAS SERVED BY THE UNION WITHIN SIXTY DAYS PRIOR TO AUGUST 31, 1972.

4. SUBSEQUENT TO 1961, THE EMPLOYER EMPLOYED NO CARPENTERS UNTIL 1969. ALTHOUGH THE UNION HAD KNOWLEDGE OF THE FACT THAT THE EMPLOYER EMPLOYED CARPENTERS IN 1969, NO ATTEMPT WAS MADE TO RENEGOTIATE THE COLLECTIVE AGREEMENT AT THAT TIME.

5. ON OR ABOUT SEPTEMBER 5, 1972 THE UNION REQUESTED THE EMPLOYER TO ENTER INTO A NEW COLLECTIVE AGREEMENT WITH IT AND THE UNION ON THAT DATE REQUESTED THE MINISTER OF LABOUR TO APPOINT A CONCILIATION OFFICER.

6. THE EMPLOYER ARGUED THAT THE COLLECTIVE AGREEMENT WHICH WAS ENTERED INTO ON FEBRUARY 11, 1960 HAS RENEWED ITSELF FROM YEAR TO YEAR. THE EMPLOYER THEREFORE ARGUED THAT SINCE THE UNION FAILED TO GIVE NOTICE TO BARGAIN FOR RENEWAL OF THE COLLECTIVE AGREEMENT WITHIN SIXTY DAYS PRIOR TO AUGUST 31, 1972, THE COLLECTIVE AGREEMENT RENEWED ITSELF FOR A FURTHER TERM OF ONE YEAR COMMENCING ON SEPTEMBER 1, 1972. IN THE ALTERNATIVE, THE EMPLOYER ARGUED THAT THE FACTS OF THIS CASE ESTABLISHED THAT THE TRADE UNION ABANDONED ITS BARGAINING RIGHTS AND IS NO LONGER ENTITLED TO REPRESENT ANY EMPLOYEES OF THE EMPLOYER.

7. HAVING REGARD TO THE FACTS SET OUT ABOVE, WE ARE NOT PREPARED TO FIND THAT THE COLLECTIVE AGREEMENT WHICH WAS ENTERED INTO ON FEBRUARY 11, 1960 HAS RENEWED ITSELF FOR ELEVEN CONSECUTIVE YEARS. ON THE CONTRARY, WE FIND THAT THE EVIDENCE CLEARLY ESTABLISHED THAT SINCE THE PARTIES HAVE NOT BARGAINED FOR THE RENEWAL OF THEIR COLLECTIVE AGREEMENT SINCE IT WAS FIRST ENTERED INTO AND HAVING REGARD TO THE FACT THAT THE EMPLOYER EMPLOYED CARPENTERS IN THE AREA COVERED BY THE COLLECTIVE AGREEMENT WITH THE KNOWLEDGE OF THE UNION IN 1969, DURING WHICH TIME THE UNION FAILED TO ASSERT ITS BARGAINING RIGHTS, AND HAVING FURTHER REGARD FOR THE FACT THAT THE TRADE UNION FAILED TO APPEAR AT THE HEARING IN THIS MATTER, ALTHOUGH DULY SERVED WITH NOTICE OF THE HEARING, WE FIND THAT THE TRADE UNION HAS ABANDONED ITS BARGAINING RIGHTS AND NO LONGER REPRESENTS ANY EMPLOYEES OF THE EMPLOYER WITHIN A RADIUS OF SIX MILES OF THE CITY OF BROCKVILLE.

8. IN VIEW OF THE FACT THAT THE TRADE UNION NO LONGER REPRESENTS ANY OF THE EMPLOYEES OF THE EMPLOYER IN THE CITY OF BROCKVILLE OR WITHIN A RADIUS OF SIX MILES THEREOF, THE MINISTER HAS NO AUTHORITY UNDER THE LABOUR RELATIONS ACT TO APPOINT A CONCILIATION OFFICER AS REQUESTED BY THE TRADE UNION IN THIS CASE.

1801-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE HYDRO ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES - C.U.P.E., ONTARIO HYDRO EMPLOYEES' UNION LOCAL 1000 (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

DECISION OF THE BOARD:

OCTOBER 19, 1972.

1. THE RESPONDENT BY LETTER DATED SEPTEMBER 27, 1972 HAS REQUESTED THAT THE BOARD REVOKE ITS DECISION APPOINTING THE EXAMINER IN THIS MATTER AND TO LIST THIS MATTER FOR HEARING TOGETHER WITH THE APPLICATION IN BOARD FILE NO. 1789-71-R (WHICH IS ANOTHER APPLICATION

BY THE APPLICANT FOR CERTAIN EMPLOYEES OF THE RESPONDENT). IT IS THE RESPONDENT'S POSITION THAT THE EVIDENCE WHICH APPEARS IN THE REPORT OF THE EXAMINER IN AN APPLICATION BY OIL, CHEMICAL AND ATOMIC WORKERS' UNION FOR EMPLOYEES OF THE RESPONDENT AT THE BRUCE NUCLEAR POWER DEVELOPMENT (BOARD FILE NO. 1742-71-R) IS APPLICABLE AND COULD BE APPLIED IN THE INSTANT CASE TOGETHER WITH OTHER EVIDENCE WHICH THE RESPONDENT WOULD WISH TO CALL BEFORE THE BOARD.

2. THE APPLICANT HAS OPPOSED THE RESPONDENT'S REQUEST AND TAKES THE POSITION THAT THE MATTER COULD BE DEALT WITH MORE EXPEDITIOUSLY THROUGH THE EXAMINER IN VIEW OF THE FACT THAT THE EXAMINER COULD SCHEDULE MEETINGS FOR HIS INQUIRY ON CONSECUTIVE DAYS WHICH MIGHT NOT BE POSSIBLE FOR THE BOARD TO DO IF THE BOARD WERE TO DECIDE TO HEAR THE EVIDENCE.

3. THE BOARD HAS CONSIDERED THE REQUEST OF THE RESPONDENT IN LIGHT OF THE OBJECTIONS OF THE APPLICANT AND IS OF THE VIEW THAT IT SHOULD NOT DEPART FROM ITS REGULAR PRACTICE OF OBTAINING THE EVIDENCE WITH RESPECT TO THE COMPOSITION AND APPROPRIATENESS OF THE BARGAINING UNIT WITH THE ASSISTANCE OF THE EXAMINER. THE BOARD ACCORDINGLY DENIES THE RESPONDENT'S REQUEST AND DIRECTS THAT THE EXAMINER PROCEED WITH HIS INQUIRY AS AUTHORIZED BY THE BOARD IN ITS DECISION OF JUNE 28, 1972 IN THIS CASE.

4. THE PARTIES, HOWEVER, ARE DIRECTED TO ASSESS THEIR POSITIONS WITH A VIEW TO AGREEING TO APPLY THE EVIDENCE WHICH HAS ALREADY BEEN OBTAINED BY THE EXAMINER IN THIS MATTER DURING THE COURSE OF HIS INQUIRY IN BOARD FILE 1742-71-R REFERRED TO ABOVE AND AS CONTAINED IN THE EXAMINER'S REPORT IN THAT CASE DATED SEPTEMBER 19, 1972.

2129-72-U: MANSFIELD MATHIAS (APPLICANT) V. FORD MOTOR COMPANY OF CANADA, LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: MANSFIELD MATHIAS FOR THE APPLICANT; DONALD J. M. BROWN FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 31, 1972.

1. THE NAME "HARRY MELLANBY JOHN ADAIR FORD MOTOR Co." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "FORD MOTOR COMPANY OF CANADA, LIMITED".

2. THE APPLICANT HAS APPLIED TO THE BOARD FOR A DECLARATION THAT A LOCKOUT CALLED OR AUTHORIZED BY THE RESPONDENT IS UNLAWFUL.

3. THE FACTS WHICH ARE NOT IN DISPUTE ARE SIMPLE AND ARE AS

FOLLOWS: ON MAY 23, 1972, THE APPLICANT WAS SUSPENDED BY THE RESPONDENT FOR A PERIOD OF THREE DAYS FOLLOWING THE FORMER'S REFUSAL TO OPEN HIS LUNCH BOX WHEN SO INSTRUCTED BY A PLANT PROTECTION OFFICER. AT THE HEARING OF THIS MATTER ON JULY 19, 1972, IT WAS THE CONTENTION OF THE APPLICANT THAT SUCH ACTION ON THE PART OF THE RESPONDENT CONSTITUTED A LOCK-OUT WITHIN THE MEANING OF SECTION 1(1)(1) OF THE LABOUR RELATIONS ACT.

4. A LOCK-OUT IS DEFINED IN THE SAID ACT AS FOLLOWS:

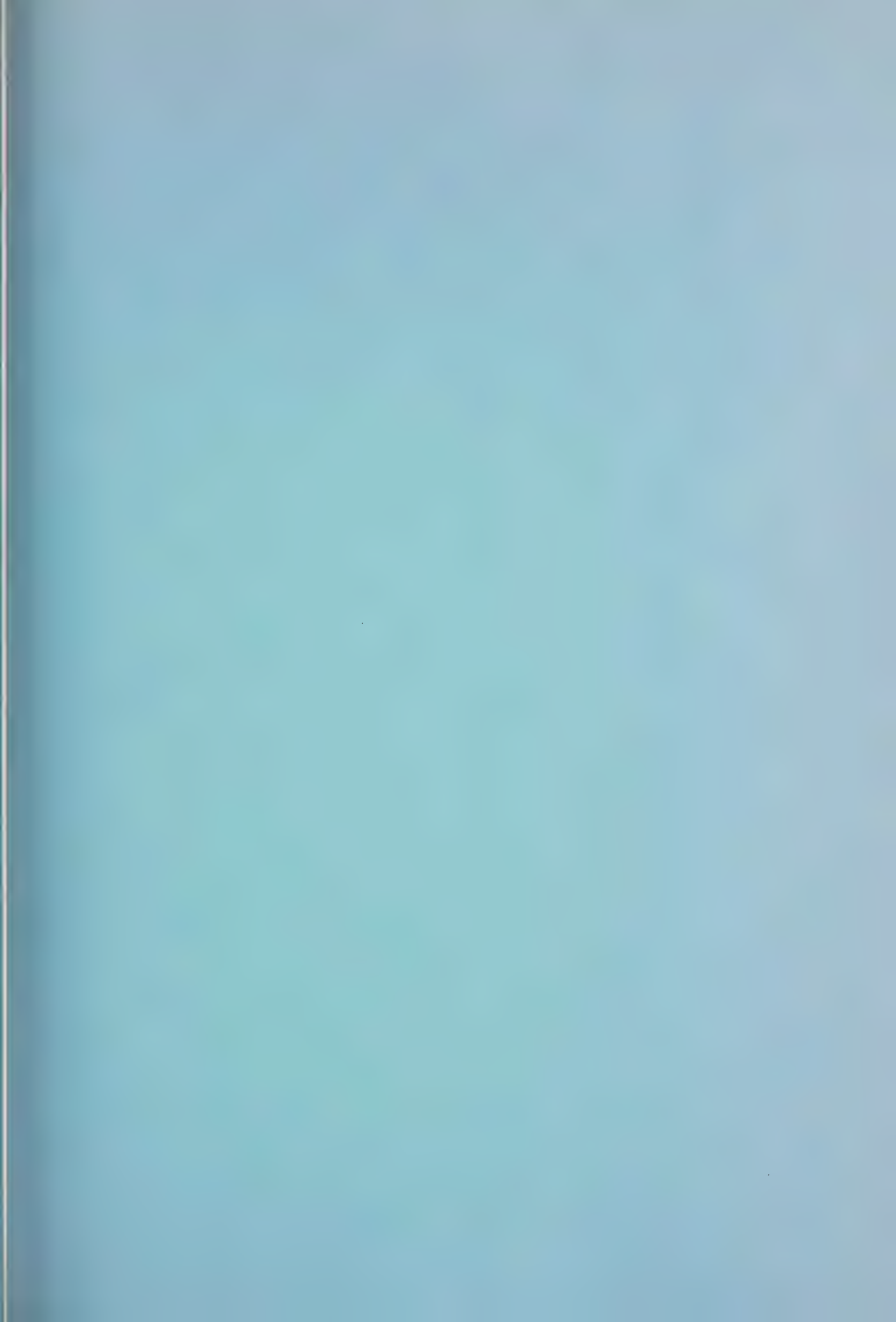
"LOCK-OUT" INCLUDES THE CLOSING OF A PLACE OF EMPLOYMENT, A SUSPENSION OF WORK OR A REFUSAL BY AN EMPLOYER TO CONTINUE TO EMPLOY A NUMBER OF HIS EMPLOYEES, WITH A VIEW TO COMPEL OR INDUCE HIS EMPLOYEES, OR TO AID ANOTHER EMPLOYER TO COMPEL OR INDUCE HIS EMPLOYEES, TO REFRAIN FROM EXERCISING ANY RIGHTS OR PRIVILEGES UNDER THIS ACT OR TO AGREE TO PROVISIONS OR CHANGES IN PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES OR DUTIES OF THE EMPLOYER, AN EMPLOYERS' ORGANIZATION, THE TRADE UNION, OR THE EMPLOYEES."

5. AS WAS STATED BY THE BOARD IN THE S. McNALLY & SONS LIMITED CASE [1971] OLRB REP. (JULY) P. 430 AT PAGE 432:

"...A LOCKOUT, ACCORDING TO THE DEFINITION, COMPRISES TWO ELEMENTS. THE FIRST OF THESE IS A CLOSING OF THE PLACE OF EMPLOYMENT OR A SUSPENSION OF WORK OR A REFUSAL TO CONTINUE TO EMPLOY A NUMBER OF EMPLOYEES. THE SECOND ELEMENT QUALIFIES THE FIRST, BUT IS NEVERTHELESS AN ESSENTIAL INGREDIENT OF THE DEFINITION. IT STATES THAT, IN A LOCKOUT, THE FOREGOING ACTIONS OF AN EMPLOYER ARE DONE "WITH A VIEW TO COMPEL OR INDUCE HIS EMPLOYEES, TO REFRAIN FROM EXERCISING ANY RIGHTS OR PRIVILEGES UNDER THIS ACT OR TO AGREE TO PROVISIONS OR CHANGES IN PROVISIONS ETC." BOTH ELEMENTS MUST BE PRESENT BEFORE A LOCKOUT CAN BE SAID TO HAVE TAKEN PLACE."

6. IN OUR OPINION, THE EVIDENCE ADDUCED IN SUPPORT OF THIS APPLICATION FAILS TO ESTABLISH EITHER OF THESE TWO ELEMENTS OF THE DEFINITION AND ACCORDINGLY THE APPLICANT IS NOT ENTITLED TO SEEK THE DISCRETIONARY REMEDY OF A DECLARATION IN THESE CIRCUMSTANCES.

7. THIS APPLICATION IS THEREFORE DISMISSED.



CASE LISTINGS OCTOBER 1972

PAGE

1.	CERTIFICATION	
	(A) BARGAINING AGENTS CERTIFIED	250
	(B) APPLICATIONS DISMISSED	265
	(C) APPLICATIONS WITHDRAWN	272
2.	APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	273
3.	APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL	274
4.	APPLICATIONS FOR DECLARATION THAT LOCK-OUT UNLAWFUL	274
5.	APPLICATIONS FOR CONSENT TO PROSECUTE	275
6.	APPLICATION FOR CONSENT TO PROSECUTE (HOSPITAL ARBITRATION ACT)	276
7.	COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)	276
8.	APPLICATIONS UNDER SECTION 39 (FORMERLY S. 35(A))	277
9.	APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT	278
10.	APPLICATION UNDER SECTION 55 (FORMERLY S. 47A)	278
11.	JURISDICTIONAL DISPUTE	278
12.	APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))	278
13.	APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	279

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	2ND QUARTER	1ST 6 MONTHS FISCAL YEAR	
	FISCAL YEAR 1972-73	1972-73	1971-72
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	7	18	19
POST-HEARING VOTE	12	26	27
BALLOTS NOT COUNTED	2	2	-
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	7	18	21
POST-HEARING VOTE	18	33	30
BALLOTS NOT COUNTED	<u>1</u>	<u>2</u>	<u>1</u>
 TOTAL	47	99	98
	<u>=</u>	<u>=</u>	<u>=</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICANTS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	2ND QUARTER	1ST 6 MONTHS FISCAL YEAR	
	FISCAL YEAR 1972-73	1972-73	1971-72
*RESPONDENT UNION SUCCESSFUL	-	-	1
RESPONDENT UNION UNSUCCESSFUL	<u>6</u>	<u>9</u>	<u>14</u>
 TOTAL	6	9	15
	<u>=</u>	<u>=</u>	<u>=</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING OCTOBER 1972

BARGAINING AGENTS CERTIFIED DURING OCTOBER

NO VOTE CONDUCTED

1671-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. ZEHRS MARKETS LIMITED (RESPONDENT) v. DIAMOND "Z" ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS WAREHOUSE OPERATIONS IN WATERLOO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (27 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THAT PERSONS PRESENTLY EMPLOYED AT THE RESPONDENT'S DAIRY AND FROZEN FOOD WAREHOUSE ARE NOT INCLUDED IN THE BARGAINING UNIT.).

2031-72-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT) v. WABASSO LIMITED (CAMTEX DIVISION) (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS CAMTEX DIVISION PLANT, DUNNVILLE, SAVE AND EXCEPT SUPERVISORS (INCLUDING THE PRODUCTION CONTROLLER AND PRODUCTION CONTROL SUPERVISOR) DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF SUPERVISOR OR DEPARTMENT HEAD, PURCHASING AGENT, SECRETARY TO THE PLANT MANAGER, SECRETARY TO THE GROUP DIVISIONAL MANAGER AND THE PRODUCTION CONTROLLER, SECRETARY TO THE PERSONNEL MANAGER, SECRETARY TO THE CONTROLLER, SALESMEN, NURSES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION." (31 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES.).

2185-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. SAINT PAUL UNIVERSITY OPERATING UNDER THE NAME OF NOVALIS (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT ENGAGED IN OPERATIONS CONDUCTED AT OTTAWA BY ST. PAUL UNIVERSITY OPERATING UNDER THE NAME OF NOVALIS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONNEL CO-ORDINATOR, EXECUTIVE SECRETARY TO THE EXECUTIVE DIRECTOR AND THE SECRETARY TO THE DIRECTOR OF PERSONNEL SERVICES." (107 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES.).

2205-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. KITCHENER WATER COMMISSION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STUDENTS EMPLOYED ON A CO-OPERATIVE TRAINING BASIS." (36 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES.).

2229-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. INDUSTRIAL-MINE INSTALLATIONS LIMITED (RESPONDENT) v. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1687 (INTERVENER) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (INTERVENER) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF LEVACK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES.).

2239-72-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) v. IDYLWILD HOME (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (33 EMPLOYEES IN THE UNIT).

2248-72-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. YORK TRADING LIMITED (RESPONDENT) v. WAREHOUSEMEN AND MISCELLANEOUS DRIVERS' UNION, LOCAL 419 (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (47 EMPLOYEES IN THE UNIT).

2301-72-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. HOME BREAD BAKERY, A DIVISION OF CANADIAN FOOD PRODUCTS SALES LIMITED (RESPONDENT) v. BAKERY & CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 181 (INTERVENER).

UNIT: "ALL DRIVERS AND SHIPPERS OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (70 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF ALL OF THE PARTIES.).

(BARGAINING UNIT #2 AND UNIT #3 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE.).

2313-72-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL

BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. K & R READI-MIX (1971) LIMITED (RESPONDENT) V. CHRISTIAN LABOUR ASSOCIATION OF CANADA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS READY-MIX OPERATIONS AT THE TOWNSHIP OF NORTH CAYUGA IN THE COUNTY OF HALDIMAND, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

2367-72-R: OIL & GAS BURNER TECHNICIANS UNION LOCAL 1267 (APPLICANT) V. NORTH QUEEN TRANSPORT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (56 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2375-72-R: NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS AFL-CIO-CLC (APPLICANT) V. THE ONTARIO EDUCATIONAL COMMUNICATIONS AUTHORITY (RESPONDENT).

UNIT: "ALL OFFICE AND SALES EMPLOYEES OF THE RESPONDENT WORKING IN AND/OR OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS AND/OR MANAGERS AND PERSONS ABOVE THE RANKS OF SUPERVISOR AND MANAGER, SUPERINTENDENTS, ASSISTANT SUPERINTENDENTS, ASSOCIATE SUPERINTENDENTS, PRODUCERS, DIRECTOR/PRODUCERS, EXECUTIVE PRODUCERS, EDUCATOR PRODUCERS, EDUCATION SUPERVISORS, ENGINEERS, ACCOUNTANTS, CORPORATE OFFICERS, CURATOR MRC, LIBRARIAN MRC, DESIGN CO-ORDINATOR, PROJECT OFFICERS, PROJECT CONSULTANTS, FINANCIAL OFFICERS, INDUSTRIAL RELATIONS OFFICERS, TALENT RELATIONS OFFICERS, INTERNAL AUDITOR, OPERATIONS CO-ORDINATOR, COPYRIGHT CLEARANCES OFFICERS, ASSISTANTS TO COPYRIGHT CLEARANCE OFFICERS, PRODUCTION CO-ORDINATOR, PRESENTATIONS CO-ORDINATOR, PURCHASING OFFICERS, RESEARCH OFFICERS, ASSISTANT RESEARCH OFFICERS; SECRETARY TO MANAGER OF ACCOUNTING MAXIMUM OF 2 SECRETARIES TO EACH OF CHAIRMAN, EXECUTIVE DIRECTOR, GENERAL MANAGER, SECRETARY, LEGAL OFFICERS, BRANCH DIRECTORS, SUPERINTENDENT OF RESEARCH AND DEVELOPMENT, SUPERINTENDENT OF REGIONAL LIAISON, MANAGER OF MARKETING, ASSOCIATE SUPERINTENDENTS - PROGRAMMING, AND CORPORATE OFFICERS; PERSONNEL CLERKS, STOCK SHOT OFFICER, TALENT CO-ORDINATOR, PAYROLL CLERKS, ADMINISTRATIVE ASSISTANTS, ACCOMMODATIONS OFFICER, MTST OFFICERS, STORES OFFICER (SUPERVISOR), SPECIAL SERVICES ASSISTANT (MSI), SCRIPT CO-ORDINATOR, SCHEDULING OFFICER, PERSONNEL OFFICERS, REGIONAL AFFAIRS OFFICERS, SALES OFFICER, AND THOSE PERSONS HERETOFORE COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (85 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES.). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES, FOR THE REASONS AS SET OUT IN WRITING ON OCTOBER 13, 1972, THAT INFORMATION OFFICERS I TO IV, UNIT MANAGERS, AND DRIVERS ARE INCLUDED IN THE BARGAINING UNIT AND THAT STOCK SHOT OFFICERS ARE EXCLUDED FROM THE BARGAINING UNIT.).

2389-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. McDONALD APPLIANCE SERVICE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (36 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT THE PARTS CLERKS ARE EXCLUDED FROM THE SAID BARGAINING UNIT).

2390-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. McDONALD APPLIANCE SERVICE LIMITED (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES STAFF AND ONE SECRETARY TO THE MANAGER." (25 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2444-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. G. S. WARK LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS OF THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2471-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. PEMBROKE GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL LAY LABORATORY AND RADIOLOGY TECHNICIANS OF THE RESPONDENT AT PEMBROKE, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (12 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT LABORATORY ASSISTANTS ARE NOT INCLUDED IN THE BARGAINING UNIT).

2503-72-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 787 (APPLICANT) V. AUTOMATIC SPRINKLER LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT ENTERED INTO WITH THE RESPONDENT." (6 EMPLOYEES IN THE UNIT).

2532-72-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LIVINGSTON INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

2534-72-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. MICRO PLASTICS CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT SHIFT LEADERS, PERSONS ABOVE THE RANK OF SHIFT LEADE, SALES AND OFFICE STAFF." (23 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

2536-72-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. FREIGHTMASTER LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LINDSAY, SAVE AND EXCEPT DISPATCHER, PERSONS ABOVE THE RANK OF DISPATCHER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (12 EMPLOYEES IN THE UNIT).

2544-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. LAST MINUTE MANUFACTURING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THOROLD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED ON A CO-OPERATIVE TRAINING BASIS WITH WATERLOO COLLEGE." (47 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2546-72-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 343 (APPLICANT) V. ELECTRICIANS TORONTO CREDIT UNION LTD. (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (2 EMPLOYEES IN THE UNIT).

2548-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1036 (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF ST. JOSEPH (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF ST. JOSEPH, SAVE AND EXCEPT ROAD SUPERINTENDENT, PERSONS ABOVE THE RANK OF ROAD SUPERINTENDENT AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

2559-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AG-

RICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. GLOBE ENVELOPES PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (17 EMPLOYEES IN THE UNIT).

2570-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. BONNECHERE MANOR (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RENFREW, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, MAINTENANCE SUPERVISOR, KITCHEN SUPERVISOR, HOUSEKEEPING SUPERVISOR, PERSONS ABOVE THE RANK OF SUPERVISOR, TECHNICAL PERSONNEL, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (156 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS).

2571-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. BOT CONSTRUCTION (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

2582-72-R: LOCAL 304 - INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA - AFL-CIO; CLC (APPLICANT) V. PUBLIC UTILITIES COMMISSION FOR THE TOWN OF ALEXANDRIA, ONTARIO (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ALEXANDRIA, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND OFFICE STAFF." (8 EMPLOYEES IN THE UNIT).

2585-72-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. PRESTRESS PIONEERS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

2593-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRI-

CULTURAL IMPLEMENT WORKERS OF AMERICA, (U.A.W.) (APPLICANT) V. TOGA MANUFACTURING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF SANDWICH SOUTH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (57 EMPLOYEES IN THE UNIT).

2600-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. FINDLAY - JONES INSULATION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2603-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. MACISAAC MINING AND TUNNELLING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

2607-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. BEAVER CONSTRUCTION (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (37 EMPLOYEES IN THE UNIT).

2610-72-R: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT & GENERAL WORKERS (APPLICANT) V. JACK WOOD'S EASTWAY PLYMOUTH CHRYSLER LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT OFFICE STAFF, SALES STAFF, SERVICE SALESMEN, CONTROL TOWER OPERATOR, FRONT COUNTER PARTS SALESMEN, FOREMEN (INCLUDING PRE-DELIVERY & INSPECTION), PERSONS ABOVE THE RANK OF FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2611-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. UNI-FORM BUILDERS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES).

2613-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. SIM-COE MECHANICAL CONTRACTING LTD. (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

2618-72-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES LOCAL UNION 1891 (APPLICANT) V. C. ROMANELLI DRYWALL LTD. (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT).

2619-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. E. S. MARTIN CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

2623-72-R: LOCAL UNION 586, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. REINMAX LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

2625-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. EASTERN CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2627-72-R: SERVICE EMPLOYEES UNION LOCAL 268 AFFILIATED WITH THE S.E.I.U. AF OF L., C.I.O. & C.L.C. (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF TERRACE BAY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RECREATION DEPARTMENT OF THE RESPONDENT,

SAVE AND EXCEPT SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2628-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. THIRD GENERATION REALTY LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2630-72-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. THE HOBART MFG. CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT SERVICE SUPERVISOR, PERSONS ABOVE THE RANK OF SERVICE SUPERVISOR, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

2636-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION #397 (APPLICANT) V. DALTON ENGINEERING & CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2640-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. DELMAR CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING IN FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (35 EMPLOYEES IN THE UNIT).

2644-72-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 478, AFFILIATED WITH S.E.I.U. - A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. DISTRICT OF PARRY SOUND (WEST) HOME FOR THE AGED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS BELVEDERE HEIGHTS HOME FOR THE AGED IN PARRY SOUND, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (49 EMPLOYEES IN THE UNIT). (THE

BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE RECEPTIONIST IS EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF).

2647-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION #493 (APPLICANT) V. SCHWENGER CONSTRUCTION LIMITED (RESPONDENT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 786 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS OF THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2655-72-R: UNITED STEELWORKERS OF AMERICA AFL-CIO-CLC (APPLICANT) V. CANADIAN OXYGEN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT." (9 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2674-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. NORTHSTAR LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF DUFFERIN INCLUDING THE TOWN OF ORANGEVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

2681-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. T. P. CRAWFORD LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2682-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. ELLIS-DON LTD. (RESPONDENT) V. THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 736 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2686-72-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES LOCAL UNION 1891 (APPLICANT) V. NATIONAL WALL & ACOUSTICS LTD. (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT DRY-WALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT).

2694-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MANDELLA FORMING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2695-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. FORCE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2698-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. ROSEWAY CONST. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (6 EMPLOYEES IN THE UNIT).

2701-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. SCHWENGER CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS OF THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2719-72-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. NEWMARCH MECHANICS (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

2357-72-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. WESMAK LUMBER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS KORMAK DIVISION IN EISENHOWER TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (73 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		63
NUMBER OF PERSONS WHO CAST BALLOTS	51	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	29	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	21	

2409-72-R: INTERNATIONAL UNION UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1962 (APPLICANT) V. TORONTO GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL SECURITY OFFICERS EMPLOYED BY THE RESPONDENT AT 101 COLLEGE STREET, 550 UNIVERSITY AVENUE AND 555 UNIVERSITY AVENUE, TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND CLERICAL STAFF." (27 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		26
NUMBER OF PERSONS WHO CAST BALLOTS	23	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	19	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	4	

2500-72-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT)
V. KINGSTON SPINNERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN KINGSTON, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE, CLERICAL AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (223 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	218
NUMBER OF PERSONS WHO CAST BALLOTS	174
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	94
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	79

2557-72-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT)
V. BOARD OF HOSPITAL TRUSTEES OF THE CITY OF LONDON (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN LONDON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SECRETARIES TO THE DIRECTOR OF SPECIAL SERVICES, EXECUTIVE DIRECTOR, DIRECTOR OF FINANCE SERVICES, DIRECTOR OF HOSPITAL SERVICES, DIRECTOR OF NURSING, ASSOCIATE DIRECTOR OF NURSING, DIRECTOR OF MANAGEMENT SERVICES, CHIEF ACCOUNTANT, SENIOR SECRETARY IN THE DEPARTMENT OF PSYCHIATRY, PERSONS EMPLOYED IN A CONFIDENTIAL CAPACITY IN THE NURSING ADMINISTRATION OFFICE, ACCOUNTING DEPARTMENT, PERSONNEL SERVICES DEPARTMENT, MANAGEMENT SERVICES DEPARTMENT, ASSISTANT SUPERVISOR IN THE PAYROLL DEPARTMENT, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENTS." (293 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	302
NUMBER OF PERSONS WHO CAST BALLOTS	211
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	166
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	45

2583-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. SCARBOROUGH GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRAD-

UATE DIETITIANS, STUDENTS DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE I.U.O.E., LOCAL 796, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (600 EMPLOYEES IN THE UNIT). (HAVING REGARD FOR THE AGREEMENT OF THE PARTIES AND FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS, SPEECH THERAPISTS, AUDIOLOGISTS, RECREATIONAL AND PLAY THERAPIST, PSYCHOMETRISTS, CHILD CARE AND SOCIAL WORKERS, PULMONARY FUNCTIONS TECHNICIANS, CERTIFIED FOOD SUPERVISORS, MEDICAL PHOTOGRAPHERS AND STUDENTS TAKING A FORMAL COURSE LEADING TO CERTIFICATION.). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT PERSONS CLASSIFIED AS ELECTRICIAN APPRENTICES ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	499
NUMBER OF PERSONS WHO CAST BALLOTS	398
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	218
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	178

2587-72-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT) V. ACRTIX YARNS LIMITED (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PERTH, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE, CLERICAL AND SALES STAFF, STATIONARY ENGINEERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (167 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT DYEHOUSE LABORATORY AND DRUG ROOM STAFF, MILL TESTING OFFICE STAFF AND RETAIL STORE STAFF ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	157
NUMBER OF PERSONS WHO CAST BALLOTS	149
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	94
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	55

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

2301-72-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. HOME BREAD BAKERY, A DIVISION OF CANADIAN FOOD PRODUCTS SALES LIMITED (RESPONDENT) V. BAKERY & CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 181 (INTERVENER).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE STAFF, DRIVERS AND SHIPPERS, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		26
NUMBER OF PERSONS WHO CAST BALLOTS	26	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	26	
NUMBER OF BALLOTS MARKED AGAINST INTERVENER	0	

UNIT #3: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE STAFF, DRIVERS AND SHIPPERS, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	3	
NUMBER OF BALLOTS MARKED AGAINST INTERVENER	0	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

2441-72-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "LABORATORY ANIMAL TECHNICIANS EMPLOYED BY THE GOVERNING COUNCIL IN METROPOLITAN TORONTO AND THE TOWN OF MISSISSAUGA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, EMPLOYEES EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (60 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		45
NUMBER OF PERSONS WHO CAST BALLOTS	41	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	32	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9	

2488-72-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. SINCLAIR & VALENTINE COMPANY OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (116 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		106
NUMBER OF PERSONS WHO CAST BALLOTS	103	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	52	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	50	

2567-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. NORTH SIMCOE ELECTRICAL CONTRACTING LTD. (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS IN FAVOUR OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING OCTOBER

NO VOTE CONDUCTED

1588-71-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. GRANNY'S COUNTRY-OVEN BAKERY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (62 EMPLOYEES).

2002-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. RICHARD BENNETT DEVELOPMENTS (LONDON) LIMITED (RESPONDENT). (18 EMPLOYEES).

2057-72-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA A.F.L., C.I.O., C.L.C. (APPLICANT) V. SPRUCELEIGH FARMS, A DIVISION OF CANADA PACKERS LIMITED (RESPONDENT). (25 EMPLOYEES).

[1972] 2 OLRB M.R. - PAGE 860.

2118-72-R: ASSOCIATION OF NURSES ST. JOSEPH'S HOSPITAL, LONDON (APPLICANT) V. THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON, IN ONTARIO (RESPONDENT). (101 EMPLOYEES).

[1972] 2 OLRB M.R. - PAGE 846.

2300-72-R: DIAMOND "Z" ASSOCIATION (APPLICANT) V. ZEHR'S MARKETS LIMITED (RESPONDENT) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER). (985 EMPLOYEES).

2355-72-R: LOCAL UNION 681, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ALL-WEATHER ASPHALT MIX LIMITED (RESPONDENT) V. A COUNCIL OF TRADE UNIONS, ACTING AS THE REPRESENTATIVE AND AGENT OF TEAMSTERS LOCAL UNION 230 AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 183 (INTERVENER). (2 EMPLOYEES).

2356-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. RIDEAU VALLEY CONSTRUCTORS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (4 EMPLOYEES).

2396-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MILLER PAVING LIMITED (RESPONDENT). (56 EMPLOYEES).

2482-72-R: ROBERT BELANGER (APPLICANT) V. LAUNDRY & LINEN DRIVERS AND INDUSTRIAL WORKERS LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (RESPONDENT). (5 EMPLOYEES).

2485-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. MATTHEWS GROUP LIMITED (RESPONDENT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (INTERVENER). (NO EMPLOYEES).

2566-72-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. IMPERIAL TOBACCO PRODUCTS (ONTARIO) LIMITED (RESPONDENT) V. TOBACCO WORKERS INTERNATIONAL UNION, LOCAL 323 (INTERVENER). (120 EMPLOYEES).

[1972] 2 OLRB M.R. - PAGE 868.

2586-72-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA - LOCAL 527 (APPLICANT) V. KILMER, VAN NOSTRAND COMPANY LIMITED (RESPONDENT). (7 EMPLOYEES).

2602-72-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) V. FAHRINGER MECHANICAL CONTRACTING LIMITED (RESPONDENT) V. CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL #52 AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS). (3 EMPLOYEES).

2624-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. SWING STAGE LIMITED (RESPONDENT) V. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION No. 172 (INTERVENER). (5 EMPLOYEES).

[1972] 2 OLRB M.R. - PAGE 878.

2626-72-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 478 AFFILIATED WITH S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. PARRY SOUND DISTRICT GENERAL HOSPITAL (RESPONDENT). (11 EMPLOYEES).

2639-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) V. POLYMER CORPORATION LIMITED BUILDING SYSTEMS DIVISION (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, A.F.L.-C.I.O.-C.L.C., UNITED ASSOCIATION OF PLUMBERS & APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES & CANADA, A.F.L.-C.I.O.-C.L.C., INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC (INTERVENERS). (5 EMPLOYEES).

2649-72-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. SQUARE D COMPANY CANADA LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR). (9 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

2412-72-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. HOSTESS FOOD PRODUCTS LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT FOREMEN, SUPERVISORS AND PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND CONTRACTUAL JANITORIAL SERVICE." (385 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		377
NUMBER OF PERSONS WHO CAST BALLOTS	358	
BALLOTS SEGREGATED AND NOT COUNTED	15	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	155	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	188	

2496-72-R: TEAMSTERS LOCAL UNION No. 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. WEIGHTMAN CHIPPAWA LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT IN ITS NIAGARA FALLS PLANT AND YARD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (2 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		2
NUMBER OF PERSONS WHO CAST BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED IN FAVOUR OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS, MILLMEN & LUMBER YARD WORKERS OF AMERICA (A.F. OF L.) LOCAL UNION No. 2737	2	

2497-72-R: TEAMSTERS LOCAL UNION No. 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. E. WEIGHTMAN & SONS LIMITED (RESPONDENT) V. THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS, MILLMEN & LUMBER YARD WORKERS OF AMERICA (A.F. OF L.) LOCAL UNION No. 2737 (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT IN ITS NIAGARA FALLS PLANT AND YARD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (7 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		6
NUMBER OF PERSONS WHO CAST BALLOTS	6	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	3	

2506-72-R: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 532 (APPLICANT) V. MCMASTER UNIVERSITY MEDICAL CENTRE (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT 1200 MAIN STREET WEST, IN THE CITY OF HAMILTON, SAVE AND EXCEPT: PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN OR SUPERVISOR, OFFICE AND CLERICAL STAFF, CHAPLAINS, PHYSICISTS, PROFESSIONAL ENGINEERS, THERAPISTS (SPEECH, OCCUPATIONAL, PHYSIO, AUDIOLOGIST), PSYCHOLOGISTS AND PSYCHOMETRISTS, SOCIAL WORKERS AND CASE ASSISTANTS, MEDICAL LIBRARIAN, MEDICAL RECORD LIBRARIAN, MEDICAL RECORD TECHNICIAN, REMEDIAL GYMNASTS, SECURITY GUARDS AND WATCHMEN, DENTISTS, VETERINARIANS, BIOCHEMISTS, BACTERIOLOGISTS, PHYSIOLOGISTS, PHARMACOLOGISTS, HAEMOTOLOGISTS, BIOMEDICAL ENGINEERING STAFF, ORTHODISTS, PROSTHETISTS, DENTAL HYGIENISTS, OPTOMETRISTS, SYSTEMS ANALYSTS, COMPUTER MACHINE OPERATORS, COMPUTER PROGRAMMERS, PROGRAMME ANALYSTS, COMPUTER ANALYSTS, DESPATCHERS, BUYERS, STUDENTS IN TRAINING FOR ANY OF THE CLASSIFICATIONS EXCLUDED HEREBY, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STUDENTS ENGAGED IN A CO-OPERATIVE PROGRAMME BETWEEN THE RESPONDENT AND A UNIVERSITY OR SCHOOL." (102 EMPLOYEES). (FOR THE PURPOSE OF CLARITY, THE PARTIES HAD AGREED THAT THE TERM "OFFICE AND CLERICAL PERSONNEL" INCLUDES OFFICE AND CLERICAL STAFF IN THE FOLLOWING CATEGORIES OR AREAS: WARD CLERKS, ADMITTING AND REGISTRATION CLERKS, INFORMATION CLERKS, CASHIERS, MAIL CLERKS, LIBRARIANS, LIBRARY ASSISTANTS, SWITCHBOARD OPERATORS, FILE CLERKS, RECEPTIONISTS, CLERK TYPISTS, STENOGRAPHERS, SECRETARIES, BENEFITS CLERK, BOOKING CLERKS, MEDICAL TRANSCRIPTIONIST, PAYROLL CLERKS, STORES CLERKS, ACCOUNTING CLERKS, CLERK EXPEDITERS, MEDICAL RECORD TECHNICIANS, MATERIAL CLERKS, ACCOUNTS CLERKS, KEY PUNCH OPERATORS.). (FOR THE PURPOSE OF CLARITY, THE PARTIES HAVE AGREED THAT THE TERM "TECHNICAL PERSONNEL" INCLUDES TECHNOLOGISTS, TECHNICIANS AND ASSISTANTS IN THE FOLLOWING CATEGORIES OR AREAS: MEDICAL TECHNOLOGIST (REGISTERED OR NON-REGISTERED), ANATOMICAL PATHOLOGICAL TECHNICIAN, CYTOTECHNOLOGIST, RADIOISOTOPE TECHNICIAN, LABORATORY ASSISTANT, RADIOGRAPHER (REGISTERED AND NON-REGISTERED), DARK ROOM TECHNICIAN, DARK ROOM ASSISTANT, IMAGE PROCESSING TECHNICIAN, SYSTEMS ANALYST, ELECTROENCEPHALOGRAPHIC TECHNICIAN (REGISTERED AND NON-REGISTERED), AUTOPSY MASTER, ELECTROCARDIOGRAPH TECHNICIAN (REGISTERED AND NON-REGISTERED), RESPIRATORY TECHNOLOGIST (REGISTERED AND NON-REGISTERED), GLAUCOMA TECHNICIAN, EAR, NOSE AND THROAT TECHNICIANS, CARDIOVASCULAR TECHNICIAN, ELECTRONIC TECHNICIAN, TECHNICAL INSTRUCTORS, NUCLEAR MEDICINE TECHNICIAN (REGISTERED AND NON-REGISTERED), BIOMEDICAL ENGINEERING, HYPERBARIC CHAMBER, INHALATION THERAPY, DIALYSIS TECHNICIAN, CLINICAL INVESTIGATION, PULMONARY FUNCTION, OPHTHAMOLOGY, OPTOMETRIST, PACEMAKER CLINIC, PHARMACY, CEREBRAL VASCULAR, HYPERBARIC CHAMBER CONTROLLER, PERFUSIONISTS, PHOTOGRAPHY, GRAPHIC ARTISTS, DENTAL HYGIENISTS, DENTAL TECHNICIANS, DENTAL ASSISTANTS, OPERATING ROOM TECHNICIANS, AUDIO-VISUAL AID TECHNICIANS, ELECTROMIOGRAPHY TECHNICIAN, VENAPUNCTURE TECHNICIAN, MACHINE TOOL TECHNICIAN, ANIMAL TECHNICIAN, DRAFTSMAN, RESEARCH TECHNICIAN (REGISTERED AND NON-REGISTERED), CENTRAL SUPPLY ROOM TECHNICIAN, RESEARCH ASSOCIATE, RESEARCH ASSISTANT, DIETARY TECHNICIAN (DIET WRITERS), AND PERSONS IN TRAINING TO BECOME ANY OF THE FOREGOING TECHNICAL PERSONNEL.).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		116
NUMBER OF PERSONS WHO CAST BALLOTS	99	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	36	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	61	

2535-72-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) v. PRESTON MANUFACTURING LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		20
NUMBER OF PERSONS WHO CAST BALLOTS	20	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	18	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

1287-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. J. E. MARTEL & SONS LUMBER LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT IN ITS WOODS OPERATIONS IN THE TOWNSHIP OF PATTINSON AND THOSE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SCALERS, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (92 EMPLOYEES IN THE UNIT). (THE BOARD FURTHER STATED IN PARAGRAPH 2 OF ITS DECISION DATED MARCH 7TH, 1972, "2 ... THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE TRUCK DRIVERS AND THE MECHANICS ARE INCLUDED IN THE BARGAINING UNIT #1.").

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		25
NUMBER OF PERSONS WHO CAST BALLOTS	24	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	19	

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT IN ITS MILL OPERATIONS AT CHAPLEAU, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SCALERS, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		50
NUMBER OF PERSONS WHO CAST BALLOTS		50
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	7	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	42	

1939-72-R: INTERNATIONAL UNION OF DOLL, & TOY WORKERS OF THE U.S.A. & CANADA, LOCAL 905 (APPLICANT) V. STANDARD BRANDS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT 1075 ELLESMERE ROAD IN THE BOROUGH OF SCARBOROUGH, SAVE AND EXCEPT FOREMAN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (32 EMPLOYEES IN THE UNIT). (THE BOARD FURTHER STATED IN ITS DECISION DATED JUNE 27TH, 1972: "... THAT LABORATORY TECHNICIANS ARE INCLUDED IN BARGAINING UNIT #1.").

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		29
NUMBER OF PERSONS WHO CAST BALLOTS		29
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	11	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	17	

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT ITS WAREHOUSE AT 1075 ELLESMERE ROAD IN THE BOROUGH OF SCARBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (24 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		20
NUMBER OF PERSONS WHO CAST BALLOTS		20
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	8	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	12	

2143-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE NORTH SHORE BOARD OF EDUCATION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN THE NORTH SHORE BOARD OF EDUCATION DISTRICT, SAVE AND EXCEPT ADMINIS-

TRATIVE OFFICER, PERSONS ABOVE THE RANK OF ADMINISTRATIVE OFFICER, EXECUTIVE SECRETARY TO THE SUPERINTENDENT OF ADMINISTRATION AND EXECUTIVE SECRETARY TO THE DIRECTOR OF EDUCATION." (52 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	24
NUMBER OF PERSONS WHO CAST BALLOTS	24
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	20

2542-72-R: FUR, LEATHER, SHOW & ALLIED WORKERS' UNION, LOCAL 82 AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. CANADIAN SKATE INDUSTRIES, A DIVISION OF JELINEK SPORTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 450 SOUTH SERVICE ROAD, OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (52 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	55
NUMBER OF PERSONS WHO CAST BALLOTS	55
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	22
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	32

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING OCTOBER

2462-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. BRADSLIL CONTRACTING COMPANY AND BRAMALEA GENERAL CONTRACTING (PEEL) LIMITED (RESPONDENTS). (2 EMPLOYEES).

2463-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. HASHMAN CONSTRUCTION LIMITED (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (INTERVENER). (16 EMPLOYEES).

2533-72-R: THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. THE CARLETON TOWERS HOTEL (RESPONDENT). (96 EMPLOYEES).

2564-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. SANCO CONSTRUCTION (LONDON) LIMITED OPERATING AS NORTHERN READY MIX (RESPONDENT). (12 EMPLOYEES).

2572-72-R: MECHANICAL CONTRACTORS ASSOCIATION KINGSTON (APPLICANT) V. LOCAL UNION 221 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (RESPONDENT). (NO EMPLOYEES).

2590-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. W. G. GALLAGHER CONSTRUCTION (RESPONDENT). (5 EMPLOYEES).

2595-72-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) V. CAPITAL COACH LINES CO. LTD. (RESPONDENT). (141 EMPLOYEES).

2599-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. BARGE CONSTRUCTION LTD. (RESPONDENT). (3 EMPLOYEES).

2632-72-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. NEWMARCH MECHANICS (RESPONDENT) V. THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (LOCAL 804) (INTERVENER). (2 EMPLOYEES).

2633-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. F. P. I. INCORPORATED (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES LOCAL UNION 200 (INTERVENER). (3 EMPLOYEES).

2635-72-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 124 OTTAWA, HULL (APPLICANT) V. YVON GAUVREAU (RESPONDENT). (5 EMPLOYEES).

2746-72-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES TEAMSTERS LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. BECKER MILK COMPANY LIMITED (RESPONDENT). (NO EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED

OF DURING OCTOBER

2477-72-R: R. C. BUILDING SYSTEMS LIMITED (APPLICANT) V. COUNCIL OF CONCRETE FORMING TRADE UNIONS (RESPONDENT). (NO EMPLOYEES). (DISMISSED).

2479-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 303 (RESPONDENT). (1 EMPLOYEE). (GRANTED).

2507-72-R: CENTRE-TOWN DEVELOPMENTS LIMITED (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (RESPONDENT). (NO EMPLOYEES). (DISMISSED).

2519-72-R: CLEOPHAS DESPRES, FOR EMPLOYEES OF INDUSTRIAL WINDOW CLEANERS

LIMITED (APPLICANT) V. LAUNDRY & LINEN DRIVERS & INDUSTRIAL WORKERS, LOCAL 847 (RESPONDENT). (17 EMPLOYEES). (GRANTED).

2529-72-R: LLEWELLY BECK (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, LOCAL 28 (RESPONDENT) V. BROOKER TRADE BINDERY LIMITED (INTERVENER). (39 EMPLOYEES). (WITHDRAWN).

2549-72-R: LOCAL 16-9 COLUMBIA FINISHING MILLS LTD. (APPLICANT) V. LOCAL 9 INTERNATIONAL LEATHER GOODS, PLASTICS AND NOVELTY WORKERS UNION (RESPONDENT) V. COLUMBIA FINISHING MILLS LTD. (INTERVENER). (19 EMPLOYEES). (DISMISSED).

2562-72-R: MRS. TRUDY MARR, REPRESENTING MOUNTAIN NURSING HOME (APPLICANT) V. SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 532 AFFILIATED WITH THE S.E.I.U., AFL-CIO-CLC (RESPONDENT) V. MOUNTAIN NURSING HOME LIMITED (INTERVENER). (57 EMPLOYEES). (DISMISSED).

2575-72-R: RONALD ANDERSON, EMERTEEN HURLEY, MARGARET CUSHMAN, LOIS LAUGHY, VIRGINIA BRAITHWAITE, HELEN OSBORNE (APPLICANTS) V. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220 (RESPONDENT). (6 EMPLOYEES). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 877.

2601-72-R: ANTHES EQUIPMENT LIMITED (APPLICANT) V. TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (RESPONDENT). (2 EMPLOYEES). (GRANTED).

2675-72-R: CHERYL MOHAMMED, 29 UPPER CANADA DRIVE, APT. 218, WILLOWDALE, ONTARIO (APPLICANT) V. SERVICE EMPLOYEES' UNION, LOCAL 204 (RESPONDENT). (84 EMPLOYEES). (DISMISSED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

OCTOBER

2745-72-U: BREWERS' WAREHOUSING COMPANY LIMITED (APPLICANT) V. THE PERSONS NAMED IN SCHEDULES A TO H OF THIS APPLICATION (RESPONDENTS). (WITHDRAWN).

2765-72-U: CONSOLIDATED FASTRATE LIMITED (APPLICANT) V. FRED DONNELLY ET AL (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR DECLARATION THAT LOCK-OUT UNLAWFUL DISPOSED OF DURING

OCTOBER

2025-72-U: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED

BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. KAKABEKA
TIMBER LIMITED (RESPONDENT). (WITHDRAWN).

2129-72-U: MANSFIELD MATHIAS (APPLICANT) V. FORD MOTOR COMPANY OF CANADA,
LIMITED (RESPONDENT). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 921.

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING OCTOBER

1999-72-U: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693, OF THE UNITED
BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. KAKABEKA
TIMBER LIMITED (RESPONDENT). (WITHDRAWN).

2074-72-U: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. CANADA
GLAZED PAPERS LIMITED (RESPONDENT). (WITHDRAWN).

2127-72-U: FUR, LEATHER, SHOE & ALLIED WORKERS' UNION, LOCAL 82, AF-
FILATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH
AMERICA, AFL-CIO (APPLICANT) V. FRANCINE FOOTWEAR LIMITED, BIAGIO LOM-
BARDI AND BILL VIEIRRA (RESPONDENTS). (WITHDRAWN).

2224-72-U: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT
CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V.
SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE LIMITED, DAL BALZER AND
BEN KOOP (RESPONDENTS). (WITHDRAWN).

2414-72-U: LAKESHORE DIE CASTING LIMITED (APPLICANT) V. UNITED ELEC-
TRICAL, RADIO AND MACHINE WORKERS OF AMERICA LOCAL 553 (UE) (RESPONDENT).
(WITHDRAWN).

2415-72-U: LAKESHORE DIE CASTING LIMITED (APPLICANT) V. RAPHAEL BALLAN-
TINE (RESPONDENT). (WITHDRAWN).

2424-72-U: LAKESHORE DIE CASTING LIMITED (APPLICANT) V. R. BALLANTINE,
J. BASTIEN, R. BAXTER, D. GOLKA, R. GUENETTE, K. HARE, R. LANGILLE, R.
LIZOTTE, S. MICHAUD, H. MUISE, J. NARUSIS, M. PEDERSON, G. SINGH, H.
SINGH, M. SINGH, E. STAHLBAUM, AND J. WROBEL (RESPONDENTS). (WITHDRAWN).

2683-72-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)
(APPLICANT) V. VIPOND AUTOMATIC SPRINKLER COMPANY LIMITED (RESPONDENT).
(WITHDRAWN).

2766-72-U: CONSOLIDATED FASTFRATE LIMITED (APPLICANT) V. FRED DONNELLY
ET AL (RESPONDENTS). (WITHDRAWN).

APPLICATION FOR CONSENT TO PROSECUTE (HOSPITAL ARBITRATION ACT) DISPOSED
OF DURING OCTOBER

19-72-PH: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. TORONTO
WESTERN HOSPITAL (RESPONDENT). (DISMISSED).

[1972] 2 OLRB M. R. - PAGE 851.

COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)
DISPOSED OF DURING OCTOBER

525-71-U: GRENVILLE O. JONES AND NORMA MACLEAN (COMPLAINANTS) V. DON-
ALD E. MOORE AND GRANT W. BRUCE AND PHILIP E. GREEN (RESPONDENT).
(WITHDRAWN).

1682-71-U: SERVICE EMPLOYEES UNION, LOCAL 532 (COMPLAINANT) V. MACKEN-
ZIE DOWNTOWN CONVALESCENT CENTRE (RESPONDENT). (DISMISSED).

1699-72-U: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (COM-
PLAINANT) V. MICHAEL ROSEN REAL ESTATE LIMITED (RESPONDENT). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 871.

2264-72-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL
UNION 1669 (COMPLAINANT) V. MINAKI MARINA (RESPONDENT). (DISMISSED).

2285-72-U: PRINTING SPECIALTIES & PAPER PRODUCTS UNION LOCAL 466 (COM-
PLAINANT) V. DRUMMOND BUSINESS FORMS LIMITED (RESPONDENT). (DISMISSED).

2293-72-U: WILLIAM STOUTLEY (COMPLAINANT) V. BARTENDERS & WAITERS UNION
LOCAL 280 AND EL MOCAMBO TAVERNE (RESPONDENTS). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 862.

2318-72-U: RODERIC E. McDONALD (COMPLAINANT) V. N. J. SPIVAK LIMITED
(RESPONDENT). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 864.

2328-72-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. DANWAY
INDUSTRIES LIMITED (RESPONDENT). (WITHDRAWN).

2329-72-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. DANWAY
INDUSTRIES LIMITED (RESPONDENT). (WITHDRAWN).

2330-72-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. DANWAY
INDUSTRIES LIMITED (RESPONDENT). (WITHDRAWN).

2339-72-U: TORONTO PRINTING PRESSMEN & ASSISTANTS UNION LOCAL 10 (COMPLAINANT) V. WELLER PUBLISHING COMPANY LIMITED (RESPONDENT). (GRANTED).

[1972] 2 OLRB M.R. - PAGE 875.

2450-72-U: WAYNE H. KNARR (COMPLAINANT) V. DEVON ICECREAM LTD. (RESPONDENT). (DISMISSED).

2451-72-U: WAYNE H. KNARR (COMPLAINANT) V. TEAMSTERS LOCAL 647 (RESPONDENT). (DISMISSED).

2460-72-U: NORMAN BEAUVAIS (COMPLAINANT) V. UNION LOCAL #1332 PRESIDENT MR. ERNIE APPLETON (RESPONDENT). (DISMISSED).

2494-72-U: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (COMPLAINANT) V. J. R. MENARD LTD. (RESPONDENT). (GRANTED).

2513-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. CORPORATION OF THE COUNTY OF GREY (RESPONDENT). (WITHDRAWN).

2629-72-U: NICK PAPAIOANNOU (COMPLAINANT) V. WALLACE HOUSE WAITERS UNION LOCAL 280 (RESPONDENT). (WITHDRAWN).

2576-72-U: DAVID HASTINGS (COMPLAINANT) V. UNITED HATTERS, CAP & MILLINERY WORKERS INTERNATIONAL UNION LOCAL 82 (RESPONDENT). (WITHDRAWN).

2678-72-U: ALFRED ROWE AND ROBERT MURPHY (COMPLAINANTS) V. NORTH QUEEN TRANSPORT LIMITED AND OIL & GAS BURNER TECHNICIANS UNION LOCAL 1267 (RESPONDENTS). (DISMISSED).

APPLICATIONS UNDER SECTION 39 (FORMERLY S. 35(A)) DISPOSED OF DURING

OCTOBER

969-71-M: GERALD VANDEZANDE (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW), LOCAL 636 (RESPONDENT TRADE UNION) V. PRE-CON COMPANY (RESPONDENT EMPLOYER). (GRANTED).

2386-72-M: HENDRIK W. HERRINGA (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, C.L.C., ONTARIO HYDRO EMPLOYEES' UNION, LOCAL 1000 (RESPONDENT TRADE UNION) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT EMPLOYER). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 904.

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

2530-72-M: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 549 (TRADE UNION) V. WESTINGHOUSE CANADA LIMITED (EMPLOYER). (GRANTED).

APPLICATION UNDER SECTION 55 (FORMERLY S. 47A) DISPOSED OF DURINGOCTOBER

2520-72-R: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 532, AFFILIATED WITH THE S.E.I.U., AFL, CIO, CLC (APPLICANT) V. MOUNTAIN NURSING HOME LIMITED (RESPONDENT) V. H. T. BUXBAUM (INTERVENER). (GRANTED).

JURISDICTIONAL DISPUTE

2524-72-JD: B & B STONE LIMITED (COMPLAINANT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 759 AND LORNE CAMPBELL AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (RESPONDENTS). (DISMISSED).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))DISPOSED OF DURING OCTOBER

2094-72-M: CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL NO. 218 (OFFICE UNIT) (APPLICANT) V. THE ONTARIO COUNTY OF BOARD OF EDUCATION (RESPONDENT).

2340-72-M: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. THE ADAMS MINE, CLIFFS OF CANADA LIMITED (RESPONDENT). (WITHDRAWN).

2400-72-M: AMERICAN FEDERATION OF TECHNICAL ENGINEERS, LOCAL 164 (APPLICANT) V. JAMES HOWDEN & PARSONS OF CANADA, LIMITED (RESPONDENT). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 850.

2401-72-M: AMERICAN FEDERATION OF TECHNICAL ENGINEERS, LOCAL 166 (APPLICANT) V. JAMES HOWDEN & PARSONS OF CANADA, LIMITED (RESPONDENT). (DISMISSED).

2503-72-M: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 787 (APPLICANT) V. AUTOMATIC SPRINKLER LIMITED (RESPONDENT).

2539-72-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 702 (APPLICANT) V. THE CORPORATION OF THE TOWN OF ESSEX (RESPONDENT). (WITHDRAWN).

2643-72-M: CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 1255 (APPLICANT) V. THE CORPORATION OF THE TOWN OF PICTON (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

2255-72-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (APPLICANT) V. DRUMMOND BUSINESS FORMS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

2388-72-R: RESTAURANT, CAFETERIA & TAVERN EMPLOYEES' UNION LOCAL 254, OF THE HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION (APPLICANT) V. BEAVER FOOD SERVICE ASSOCIATES LIMITED (RESPONDENT). (REQUEST DENIED).

2408-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. J. R. MENARD LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

[1972] 2 OLRB M.R. - PAGE 915.

2446-72-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. LECOIRS LUMBER COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 95(2)

(FORMERLY S. 79(2))

1612-71-M: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LIVINGSTON TRANSPORTATION LIMITED (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 96

(FORMERLY S. 79A)

1006-71-M: R. W. S. DELIVERY SERVICES LIMITED (EMPLOYER) V. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (TRADE UNION) V. SWISS CHALET BAR-B-Q A DIVISION OF HARVEY'S FOODS LIMITED (ADDED PARTY). (REQUEST DENIED).

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54



ONTARIO

Monthly Report

ONTARIO LABOUR RELATIONS BOARD

ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1972] OLRB REP.

CASES REPORTED

ALEXANDRA HOTEL (1971) LTD. RE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES, U. L. 261, A.F.L.-C.I.O.-C.L.C.....	963
BARTENDERS & WAITERS U. L. 280 & EL MOCAMBO TAVERNE RE WILLIAM STOUTLEY.....	938
BOARD OF EDUCATION FOR THE CITY OF TORONTO RE MISS EILEEN SKILLEN AND C.U.P.E. L. 1316.....	989
BROWN, HORACE, RE C.U.G.E.....	976
CAMERON PACKAGING INC. RE UNITED PAPERWORKERS INT'L U.....	988
CAPITAL COACH LINES CO. LTD. RE C.B.R.T.....	945
DOUGLAS AIRCRAFT CO. OF CANADA LTD. RE U.A.W.....	942
DURABLE DRYWALL LTD. RE B.P.A.T. - L. 1891.....	939
KINGSTON TYPOGRAPHICAL U. NO. 204, I.T.U., & THE KINGSTON-WHIG- STANDARD CO. LTD. RE I.P.P.A., L. 482.....	959
LECOURS LUMBER CO. LTD. RE LUMBER & SAWMILL WORKERS U., L. 2995 C.J.A. AND GROUP OF EMPLOYEES.....	982
MECHANICAL CONTRACTORS ASSOC. HAMILTON AND P.P.F., L. U. 67 AND METRO. HAMILTON HOUSE BUILDERS' ASSOC. AND PIPE LINE CON- TRACTORS ASSOC. OF CANADA.....	923
NORTHERN ELEC. CO. LTD. RE U.A.W. AND CANADIAN UNION OF COM- MUNICATION WORKERS AND U.E.....	940
PINECREST PRO. LTD. & FURNITEX CORP. LTD. RE L.U. 2557 - C.J.A.....	973
POLYMER CORP. LTD. BLDG. SYSTEMS DIV. RE I.U.O.E., L. 772 AND C.J.A., A.F.L.-C.I.O.-C.L.C., P.P.F., A.F.L.-C.I.O.-C.L.C., I.B.E.W., AFL-CIO-CIO.....	975
PORT COLBORNE BLOCK LTD. RE U.S.A. AND GROUP OF EMPLOYEES.....	972
RAY PLASTICS LTD. RE U.E. AND GROUP OF EMPLOYEES.....	946
SEVEN-UP (ONT.) LTD. RE FRED WEEPLES, JIM SMITH, BERNARD DAVID STEVENSON, AND LARRY HAMEL AND S.F.C.D. AFL-CIO-CIO.....	966
STRATFORD, OF CITY, AND C.U.P.E., L. 1385.....	900

INDEX OF CASES

ACCREDITATION - S115(5) - EFFECT OF EMPLOYER CONTRACTORS CONTRIBUTING AN AMOUNT OF MONEY AS REQUIRED UNDER A COLLECTIVE AGREEMENT WITH THE RESPONDENT BASED ON EMPLOYEES' PER HOURS WORKED FOR PURPOSES OF ADVANCING THE INDUSTRY - EFFECT OF APPLICANT EMPLOYING FUNDS FOR PURPOSES OF AN ACCREDITATION APPLICATION - WHETHER A VIOLATION OF THE COLLECTIVE AGREEMENT RELEVANT - WHETHER AN EMPLOYEE CONTRIBUTION MAY BE CONSTRUED AS A "TRADE UNION" CONTRIBUTION - WHETHER EMPLOYEES AS PRESUMED BENEFICIARIES OF THE FUND MAKE "AN INVOLUNTARY CONTRIBUTION" THROUGH A TRADE UNION REPRESENTATIVE - WHETHER A VIOLATION OF SECTION S114(1) - WHETHER THE BOARD WILL COMBINE THE RESIDENTIAL SECTOR WITH THE COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL SECTOR - EFFECT OF FAILURE TO COMBINE ON THE APPLICATION OF THE ACCREDITATION PROVISIONS OF THE ACT - EFFECT OF MINIMAL PARTICIPATION IN RESIDENTIAL CONSTRUCTION - WHETHER EFFECT OF ACCREDITATION ORDER TO OPERATE TO PREJUDICE OF AN INTERVENER ASSOCIATION ENGAGED EXCLUSIVELY IN THE RESIDENTIAL SECTOR - WHETHER RELEVANT - S115(1) - WHETHER AN EMPLOYER FOR PURPOSES OF THE ACCREDITATION APPLICATION - EFFECT OF AN EMPLOYER FAILING TO RESPOND TO NOTICES OF THE BOARD - EFFECT OF REPRESENTATIONS OF INDIVIDUAL EMPLOYERS WHERE NO EVIDENCE TO THE CONTRARY - ONUS TO REBUT EVIDENCE OF INDIVIDUAL EMPLOYERS RESTS WITH THE APPLICANT AND RESPONDENT.

MECHANICAL CONTRACTORS ASSOCIATION HAMILTON v. THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 67 v. METROPOLITAN HAMILTON HOUSE BUILDERS' ASSOCIATION v. PIPE LINE CONTRACTORS ASSOCIATION OF CANADA.....

923

BARGAINING UNIT - CONSTRUCTION INDUSTRY - WHETHER "DRY-WALL TAPERS" FORM PART OF THE PROPOSED BARGAINING UNIT OF "ALL PAINTERS AND PAINTERS APPRENTICES" - EFFECT OF "DRY-WALL TAPERS" BEING HERETOFORE REPRESENTED BY THE APPLICANT UNDER A COLLECTIVE AGREEMENT WITH THE RESPONDENT.

INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES - LOCAL 1891 v. DURABLE DRYWALL LTD.....

939

BARGAINING UNIT - PRACTICE - RECONSIDERATION - EFFECT OF BOARD NOTICE OF HEARING ENABLING PARTIES TO MAKE FURTHER REPRESENTATIONS ON ALL OUTSTANDING ISSUES - WHETHER BOARD WILL PERMIT PARTY TO MAKE ADDITIONAL REPRESENTATIONS ON THE NATURE AND COMPOSITION OF THE BARGAINING UNIT - EFFECT OF FAILING TO RAISE ISSUES BEFORE THE EXAMINER - WHETHER AN

OPPORTUNITY CONFERRED PARTY TO RAISE ISSUE - WHETHER BOARD DIRECTION "PRESERVED" AS OPPOSED TO "CREATE" A RIGHT - WHETHER BOARD TO REVOKE DECISION ON THE APPROPRIATE UNIT - EFFECT OF ABSENCE OF ADDITIONAL EVIDENCE NOT HERETOFORE AVAILABLE TO A PARTY.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) v. NORTHERN ELECTRIC COMPANY LIMITED v. CANADIAN UNION OF COMMUNICATION WORKERS v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE).....

940

BUILD-UP - CERTIFICATION - WHERE BASED ON MARKET PROJECTIONS AND COMPETITIVE CONDITIONS - WHETHER EVIDENCE FELL SHORT OF ESTABLISHING A FIRM PLAN FOR AN IMMEDIATE BUILD-UP.

UNITED PAPERWORKERS INTERNATIONAL UNION v. CAMERON PACKAGING INC.....

988

CERTIFICATION - BUILD-UP - WHERE BASED ON MARKET PROJECTIONS AND COMPETITIVE CONDITIONS - WHETHER EVIDENCE FELL SHORT OF ESTABLISHING A FIRM PLAN FOR AN IMMEDIATE BUILD-UP.

UNITED PAPERWORKERS INTERNATIONAL UNION v. CAMERON PACKAGING INC.....

988

CERTIFICATION - COLLECTIVE AGREEMENT - S5 - WHETHER STATIONARY ENGINEERS FALL INTO AN ALL PRODUCTION AND MAINTENANCE EMPLOYEE UNIT - EFFECT OF EMPLOYER PARTY FAILING TO DEDUCT CHECK-OFF - WHETHER INCUMBENT ON APPLICANT TO ADDUCE EVIDENCE THAT STATIONARY ENGINEERS WERE NOT INTENDED TO BE COVERED BY THE COLLECTIVE AGREEMENT.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 v. POLYMER CORPORATION LIMITED BUILDING SYSTEMS DIVISION v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, A.F.L.-C.I.O.-C.L.C., UNITED ASSOCIATION OF PLUMBERS & APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES & CANADA, A.F.L.-C.I.O.-C.L.C., INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC.....

935

COLLECTIVE AGREEMENT - CERTIFICATION - S5 - WHETHER STATIONARY ENGINEERS FALL INTO AN ALL PRODUCTION AND MAINTENANCE EMPLOYEE UNIT - EFFECT OF EMPLOYER PARTY FAILING TO DEDUCT CHECK-OFF - WHETHER INCUMBENT ON APPLICANT TO ADDUCE EVIDENCE THAT STATIONARY ENGINEERS WERE NOT INTENDED TO BE COVERED BY THE COLLECTIVE AGREEMENT.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 v. POLYMER CORPORATION LIMITED BUILDING SYSTEMS DIVISION v.

UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA,
A.F.L.-C.I.O.-C.L.C., UNITED ASSOCIATION OF PLUMBERS &
APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE
UNITED STATES & CANADA, A.F.L.-C.I.O.-C.L.C., INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC.....

935

COLLECTIVE AGREEMENT - RELIGIOUS OBJECTION - S39(2) - EFFECT OF
COLLECTIVE AGREEMENT PROVIDING FOR CONTINUANCE AFTER EXPIRY
DATE "UNTIL A SATISFACTORY SETTLEMENT OF SUCH NEGOTIATIONS
HAS BEEN REACHED" ... - WHETHER APPLICATION UNDER S39(1)
TIMELY AT A DATE AFTER EXPIRY OF THE COLLECTIVE AGREEMENT.

MISS EILEEN SKILLEN v. THE CANADIAN UNION OF PUBLIC EMPLOYEES
AND ITS LOCAL 1316 v. THE BOARD OF EDUCATION FOR THE CITY OF
TORONTO.....

989

CONSTITUTIONAL LAW - JURISDICTION - S92(10)(A) - WHETHER SCHOOL
BUS DRIVERS INTEGRATED WITH RESPONDENT'S OTHER BUS DRIVERS -
WHETHER AN INTEGRATED UNDERTAKING - WHETHER UNDERTAKING
FALLS WITHIN THE EXCEPTION UNDER S92(10)(A) OF THE BNA
Act.

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WOR-
KERS v. CAPITAL COACH LINES COMPANY LIMITED.....

945

CONSTRUCTION INDUSTRY - BARGAINING UNIT - WHETHER "DRY-WALL
TAPERS" FORM PART OF THE PROPOSED BARGAINING UNIT OF "ALL
PAINTERS AND PAINTERS APPRENTICES" - EFFECT OF "DRY-
WALL TAPERS" BEING HERETOFORE REPRESENTED BY THE APPLI-
CANT UNDER A COLLECTIVE AGREEMENT WITH THE RESPONDENT.

INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES -
LOCAL 1891 v. DURABLE DRYWALL LTD.....

939

JURISDICTION - CONSTITUTIONAL LAW - S92(10)(A) - WHETHER SCHOOL
BUS DRIVERS INTEGRATED WITH RESPONDENT'S OTHER BUS DRIVERS -
WHETHER AN INTEGRATED UNDERTAKING - WHETHER UNDERTAKING
FALLS WITHIN THE EXCEPTION UNDER S92(10)(A) OF THE BNA
Act.

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WOR-
KERS v. CAPITAL COACH LINES COMPANY LIMITED.....

945

JURISDICTIONAL DISPUTE - EFFECT OF INTRODUCTION OF AUTOMATED
MACHINERY INTO AN INDUSTRIAL ESTABLISHMENT INVOLVING WORK
OTHERWISE PERFORMED BY EMPLOYEES NOT REPRESENTED BY A
TRADE UNION PECULIAR TO PARTICULAR WORK FUNCTION - WHETHER
ASSIGNMENT OF WORK BASED ON CRITERIA OF PREVIOUS PERFORMANCE
OF FUNCTION BY EMPLOYEES USING OLD PROCESS SO AS TO MINIMIZE
JOB LOSS - EFFECT OF AREA PRACTICE - EFFECT OF ONE UNION

HAVING NONE SOPHISTICATED TRAINING PROCEDURES THAN ANOTHER
- WHETHER DETERMINATION TO BE BASED ON FUTURE PLANS OF
EMPLOYER TO INTRODUCE ANOTHER METHOD OF PRODUCTION - EFFECT
OF SPECULATIVE INQUIRY IN RESOLVING THE DISPUTE.

INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS UNION OF
NORTH AMERICA, LOCAL 482 v. THE KINGSTON TYPOGRAPHICAL
UNION NO. 204, I.T.U., AND THE KINGSTON-WHIG-STANDARD
COMPANY LIMITED.....

959

MEMBERSHIP - NON-PAY - EFFECT OF EQUALLY CREDIBLE TESTIMONY -
WHETHER BOARD TO GIVE EFFECT TO WRITTEN STATEMENTS -
DISCREPANCY IN INDICATING THE COLLECTOR ON THE CARDS -
WHETHER ON ATTEMPT TO MISLEAD THE BOARD - EFFECT OF
IMPROPER INSTRUCTIONS EXTENDED COLLECTOR - FORM 8 -
WHETHER DUE INQUIRY.

HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES, UNION LOCAL
261, A.F.L.-C.I.O.-C.L.C. v. THE ALEXANDRA HOTEL (1971)
LTD.....

963

MEMBERSHIP - NON-PAYS - EFFECT OF MAKING LOANS - WHETHER REPAYMENT
- EFFECT OF NON-DISCLOSURE - WHETHER CARDS FOR WHICH COLLEC-
TOR WAS RESPONSIBLE SHOULD BE DISCOUNTED.

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA,
(UE) v. RAY PLASTICS LIMITED v. GROUP OF EMPLOYEES.....

946

PETITION - EFFECT OF MANAGEMENT MEETING WITH EMPLOYEES BEING
ATTRIBUTED THE INSPIRATION OF THE PETITION - WHETHER AN
ACCORD REACHED BY MANAGEMENT WITH AN INFORMAL EMPLOYEE'S
ASSOCIATION PRIOR TO THE APPLICATION FOR CERTIFICATION
AN EXCUSE.

UNITED STEELWORKERS OF AMERICA v. PORT COLBORNE BLOCK
LIMITED v. GROUP OF EMPLOYEES.....

972

PRACTICE - RECONSIDERATION - BARGAINING UNIT - EFFECT OF BOARD
NOTICE OF HEARING ENABLING PARTIES TO MAKE FURTHER REPRE-
SENTATIONS ON ALL OUTSTANDING ISSUES - WHETHER BOARD
WILL PERMIT PARTY TO MAKE ADDITIONAL REPRESENTATIONS ON THE
NATURE AND COMPOSITION OF THE BARGAINING UNIT - EFFECT OF
FAILING TO RAISE ISSUES BEFORE THE EXAMINER - WHETHER AN
OPPORTUNITY CONFERRED PARTY TO RAISE ISSUE - WHETHER BOARD
DIRECTION "PRESERVED" AS OPPOSED TO "CREATE" A RIGHT -
WHETHER BOARD TO REVOKE DECISIONS ON THE APPROPRIATE UNIT
- EFFECT OF ABSENCE OF ADDITIONAL EVIDENCE NOT HERETOFORE
AVAILABLE TO A PARTY.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) v. NORTHERN ELECTRIC COMPANY LIMITED v. CANADIAN UNION OF COMMUNICATION WORKERS v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE).....

940

PRACTICE - RECONSIDERATION - S79 - EFFECT OF A BOARD DIRECTION PURSUANT TO S79(4)(c) - WHETHER BOARD WILL ENTERTAIN SUBMISSIONS OF A PARTY SUBSEQUENT TO A BOARD DECISION - EFFECT OF AN ATTEMPT TO CORRECT SHORTCOMINGS OF THE PARTY AFTER THE FACT.

WILLIAM STOUTLEY v. BARTENDERS & WAITERS UNION LOCAL 280 AND EL MOCAMBO TAVERNE.....

938

PROCEDURE - S95(2) - EFFECT OF COLLECTIVE AGREEMENT PROVIDING FOR DISPUTES RELATING TO WHETHER A NEW CLASSIFICATION FORMS A PART OF THE BARGAINING UNIT - WHETHER AN APPLICATION UNDER S95(2) IS WELL FOUNDED ESPECIALLY WHERE AN ARBITRATOR HAS CONCURRENT JURISDICTION TO DETERMINE BOTH - WHETHER EMPLOYEES ARE SUCH FOR PURPOSES OF THE ACT AND IF SO, WHETHER THEY SHARE A COMMUNITY OF INTEREST WITH BARGAINING UNIT EMPLOYEES - EFFECT OF AN AGREEMENT WHEREBY THE MATTER MAY BE RESOLVED BY AN ARBITRATOR - WHETHER THE EFFECT OF THE BOARD ASSERTING JURISDICTION IS TANTAMOUNT TO ASSISTING A PARTY TO REPUDIATE ON AGREEMENT.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW v. DOUGLAS AIRCRAFT COMPANY OF CANADA LTD.....

942

PROSECUTION - PARTIES - S87 - EFFECT OF BOARD DISMISSAL AGAINST PRINCIPAL - RES JUDICATA - WHETHER CAUSE OF ACTION LIES AGAINST AGENT OR OFFICER OF PRINCIPAL - EFFECT OF DISCOVERY OF NEW EVIDENCE - S95(1) - WHETHER BOARD WILL SIT AS AN APPELLATE TRIBUNAL TO THE DECISION OF ANOTHER PANEL OF THE BOARD.

CANADIAN UNION OF GENERAL EMPLOYEES v. HORACE BROWN.....

976

RECONSIDERATION - BARGAINING UNIT - PRACTICE - EFFECT OF BOARD NOTICE OF HEARING ENABLING PARTIES TO MAKE FURTHER REPRESENTATIONS ON ALL OUTSTANDING ISSUES - WHETHER BOARD WILL PERMIT PARTY TO MAKE ADDITIONAL REPRESENTATIONS ON THE NATURE AND COMPOSITION OF THE BARGAINING UNIT - EFFECT OF FAILING TO RAISE ISSUES BEFORE THE EXAMINER - WHETHER AN OPPORTUNITY CONFERRED PARTY TO RAISE ISSUE - WHETHER BOARD DIRECTION "PRESERVED" AS OPPOSED TO "CREATE" A RIGHT - WHETHER BOARD TO REVOKE DECISION ON THE APPROPRIATE UNIT - EFFECT OF ABSENCE OF ADDITIONAL EVIDENCE NOT HERETOFORE AVAILABLE TO A PARTY.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) v. NORTHERN ELECTRIC COMPANY LIMITED v. CANADIAN UNION OF COMMUNICATION WORKERS v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)..... 940

RECONSIDERATION - S79 - PRACTICE - EFFECT OF A BOARD DIRECTION PURSUANT TO S79(4)(c) - WHETHER BOARD WILL ENTERTAIN SUBMISSIONS OF A PARTY SUBSEQUENT TO A BOARD DECISION - EFFECT OF AN ATTEMPT TO CORRECT SHORTCOMINGS OF THE PARTY AFTER THE FACT.

WILLIAM STOUTLEY v. BARTENDERS & WAITERS UNION LOCAL 280 AND EL MOCAMBO TAVERNE..... 938

RELIGIOUS OBJECTION - COLLECTIVE AGREEMENT - S39(2) - EFFECT OF COLLECTIVE AGREEMENT PROVIDING FOR CONTINUANCE AFTER EXPIRY DATE "UNTIL A SATISFACTORY SETTLEMENT OF SUCH NEGOTIATIONS HAS BEEN REACHED" ... - WHETHER APPLICATION UNDER S39(1) TIMELY AT A DATE AFTER EXPIRY OF THE COLLECTIVE AGREEMENT.

MISS EILEEN SKILLEN v. THE CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 1316 v. THE BOARD OF EDUCATION FOR THE CITY OF TORONTO..... 989

REPRESENTATION VOTE - VALIDITY - EFFECT OF FAILURE OF A BALLOT TO INDICATE AN "x" - WHETHER TRUE WISHES INDICATED BY ANOTHER MARK - EFFECT OF FAILURE OF BALLOTS TO PROVIDE A FRENCH TRANSLATION IN AN ALLEGEDLY FRENCH VOTING CONSTITUENCY - EFFECT OF AWAITING UNTIL AFTER THE BALLOTS ARE CAST TO MAKE OBJECTION - WHETHER BOARD POLICY IS TO PROVIDE TRANSLATION SERVICES.

LUMBER AND SAWMILL WORKERS UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA v. LECOURS LUMBER COMPANY LIMITED v. GROUP OF EMPLOYEES..... 982

SALE OF A BUSINESS - S55(3) - EFFECT OF SALE WHERE A TRANSFER OF A LIKE BARGAINING UNIT AT A TIME WHEN BARGAINING RIGHTS ARE HELD BUT NO EXISTING COLLECTIVE AGREEMENT - S55(6) - EFFECT OF AN INTERMINGLING OF EMPLOYEES BETWEEN PREDECESSOR AND SUCCESSOR EMPLOYERS - S55(8) - WHETHER BOARD TO DIRECT A REPRESENTATION VOTE.

LOCAL UNION 2557 - UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA v. PINCREST PRODUCTS LIMITED AND FURNITEX CORPORATION LIMITED..... 973

S79 - PRACTICE - RECONSIDERATION - EFFECT OF A BOARD DIRECTION PURSUANT TO S79(4)(c) - WHETHER BOARD WILL ENTERTAIN SUBMISSIONS OF A PARTY SUBSEQUENT TO A BOARD DECISION - EFFECT OF AN ATTEMPT TO CORRECT SHORTCOMINGS OF THE PARTY AFTER THE FACT.

WILLIAM STOUTLEY v. BARTENDERS & WAITERS UNION LOCAL 280
AND EL MOCAMBO TAVERNE.....

938

S95(2) - PROCEDURE - EFFECT OF COLLECTIVE AGREEMENT PROVIDING FOR DISPUTES RELATING TO WHETHER A NEW CLASSIFICATION FORMS A PART OF THE BARGAINING UNIT - WHETHER AN APPLICATION UNDER S95(2) IS WELL FOUNDED ESPECIALLY WHERE AN ARBITRATOR HAS CONCURRENT JURISDICTION TO DETERMINE BOTH - WHETHER EMPLOYEES ARE SUCH FOR PURPOSES OF THE ACT AND IF SO, WHETHER THEY SHARE A COMMUNITY OF INTEREST WITH BARGAINING UNIT EMPLOYEES - EFFECT OF AN AGREEMENT WHEREBY THE MATTER MAY BE RESOLVED BY AN ARBITRATOR - WHETHER THE EFFECT OF THE BOARD ASSERTING JURISDICTION IS TANTAMOUNT TO ASSISTING A PARTY TO REPUDIATE ON AGREEMENT.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW v. DOUGLAS AIRCRAFT COMPANY OF CANADA LTD.....

942

S95(2) - WHETHER THE BOARD WILL SIT AS AN APPELLATE TRIBUNAL TO A BOARD OF ARBITRATION WHICH HERETOFORE FOUND A PERSON TO BE EMPLOYEE FOR PURPOSES OF THE LAB REL ACT.

CITY OF STRATFORD v. CANADIAN UNION OF PUBLIC EMPLOYEES,
LOCAL 1385.....

937

TERMINATION - S49(2) - S53(2) - TIMELINESS - WHETHER COLLECTIVE AGREEMENT FOR AT LEAST A YEAR - EFFECT OF PARTIES OPERATING UNDER THE ASSUMPTION THAT AGREEMENT TERMINATED ON DATE INDICATED THEREIN - S44(1) - EFFECT OF MANDATORY NATURE OF THE PROVISION - WHETHER BOARD'S CONCERN IS THE DATE OF TERMINATION OR THE "EFFECTIVE" DATE OF COMMENCEMENT.

FRED WEPPLER, JIM SMITH, BERNARD DAVID STEVENSON, AND LARRY HAMEL v. INTERNATIONAL UNION OF UNITED BREWERY, FLOUR CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL-CIO-CLC v. SEVEN-UP (ONTARIO) LIMITED.....

965

1189-71-R: MECHANICAL CONTRACTORS ASSOCIATION HAMILTON (APPLICANT) V. THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 67 (RESPONDENT) V. METROPOLITAN HAMILTON HOUSE BUILDERS' ASSOCIATION (INTERVENER #1) V. PIPE LINE CONTRACTORS ASSOCIATION OF CANADA (INTERVENER #2).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: W.S. COOK AND F.C. WHYTE FOR THE APPLICANT; STANLEY SIMPSON AND TREVOR BYRNE FOR THE RESPONDENT; NO ONE APPEARING FOR INTERVENER #1; NO ONE APPEARING FOR INTERVENER #2; GERALD VANDEZANDE FOR CHRISTIAN LABOUR ASSOCIATION OF CANADA; JOHN FENTON AND WILLIAM S. KNOX FOR AMALGAMATED METAL INDUSTRIES LTD.

DECISION OF THE BOARD: NOVEMBER 2, 1972.

1. THIS IS AN APPLICATION FOR ACCREDITATION BY THE MECHANICAL CONTRACTORS ASSOCIATION HAMILTON FOR ACCREDITATION AS THE BARGAINING AGENT FOR A GROUP OF EMPLOYERS. THE APPLICANT EMPLOYERS' ORGANIZATION AND THE RESPONDENT TRADE UNION ARE PARTIES TO A COLLECTIVE AGREEMENT DATED JULY 8, 1971, WHICH RUNS FROM JUNE 28, 1971 TO APRIL 30, 1973. THIS AGREEMENT IS BINDING ON MORE THAN ONE EMPLOYER IN THE AREA AND SECTORS WHICH ARE THE SUBJECT MATTER OF THIS APPLICATION. THE BOARD THEREFORE FINDS THAT IT HAS THE JURISDICTION, PURSUANT TO SECTION 113 TO ENTERTAIN THIS APPLICATION.

2. THE APPLICANT HAS FILED A TRUE COPY OF THE CONSTITUTION OF THE MECHANICAL CONTRACTORS ASSOCIATION HAMILTON. THE CONSTITUTION WAS ENACTED ON SEPTEMBER 8, 1965, AND RATIFIED BY THE MEMBERS ON THAT DATE. THE CONSTITUTION WAS SUBSEQUENTLY AMENDED AND SUCH AMENDMENT IN ITS PRESENT FORM CONTAINS INTER ALIA THE FOLLOWING CLAUSES UNDER THE HEADING "OBJECTS":

OBJECTS

- (A) TO ESTABLISH AND PROMOTE A GENERAL EMPLOYER-EMPLOYEE POLICY WHICH WILL LEAD TO A SOUND AND HARMONIOUS RELATIONSHIP WITH ANY BARGAINING AGENT REPRESENTING EMPLOYEES OF MEMBERS OF THE ASSOCIATION, OR NON-MEMBERS OF THE ASSOCIATION WHO AUTHORIZE THE ASSOCIATION TO ACT ON THEIR BEHALF;

...

- (C) TO REPRESENT ALL MEMBERS AND NON-MEMBERS WHO AUTHORIZE THE ASSOCIATION TO ACT ON THEIR BEHALF IN THE NEGOTIATION, GENERAL APPLICATION

AND ADMINISTRATION AND THE INTERPRETATION OF COLLECTIVE AGREEMENTS AND IN THE ARBITRATION OF ANY LABOUR DISPUTES;

- (D) TO REPRESENT MEMBERS AND NON-MEMBERS WHO AUTHORIZE THE ASSOCIATION TO ACT ON THEIR BEHALF IN THEIR RELATIONS WITH PROFESSIONAL BODIES AND RELATED ASSOCIATIONS;

...

- (H) TO REPRESENT, TAKE AN INTEREST IN OR ASSIST IN ANY ACTION BROUGHT BY ANY MEMBERS OR NON-MEMBERS WHICH ACTION INVOLVES A MATTER OF POLICY OR PRINCIPLE OR INTEREST TO THE ASSOCIATION;

...

- (J) TO REPRESENT THE MEMBERS AND NON-MEMBERS WHO AUTHORIZE THE ASSOCIATION TO ACT ON THEIR BEHALF BEFORE LEGISLATIVE COMMITTEES, BOARDS OF INQUIRY, COMMISSIONS AND OTHER SIMILAR BODIES;

- (K) TO BECOME AN ACCREDITED EMPLOYERS' ORGANIZATION UNDER THE LABOUR RELATIONS ACT AND TO REGULATE THE REGULATIONS BETWEEN EMPLOYERS AND EMPLOYEES IN THE CONSTRUCTION INDUSTRY AND TO REPRESENT SUCH EMPLOYERS IN COLLECTIVE BARGAINING WITH ANY SECTOR OR SECTORS OF THE CONSTRUCTION INDUSTRY IN ANY GEOGRAPHIC AREA OF AREAS AS DEFINED UNDER THE LABOUR RELATIONS ACT, OR IS DETERMINED BY THE LABOUR RELATIONS BOARD;

- (1) TO DO ALL THINGS AS ARE NECESSARY OR INCIDENTAL TO THE PROMOTION AND ATTAINMENT OF THE OBJECTS SET OUT ABOVE.

ON THE BASIS OF THE EVIDENCE THE BOARD IS SATISFIED THAT THE APPLICANT ASSOCIATION IS AN EMPLOYERS' ORGANIZATION WITHIN THE MEANING OF SECTION 106(D) OF THE ACT AND THAT IT IS A PROPERLY CONSTITUTED ORGANIZATION FOR THE PURPOSES OF SECTION 115(3) OF THE ACT.

3. IT IS CONVENIENT HERE TO DEAL WITH THE ARGUMENT OF THE RESPONDENT THAT THE BOARD MUST NOT ACCREDIT THE APPLICANT BECAUSE OF SECTION 115(5) OF THE ACT WHICH PROVIDES:

115.-(5) THE BOARD SHALL NOT ACCREDIT ANY EMPLOYERS' ORGANIZATION IF ANY TRADE UNION OR COUNCIL OF TRADE UNIONS HAS PARTICIPATED IN ITS FORMATION OR ADMINISTRATION OR HAS CON-

TRIBUTED FINANCIAL OR OTHER SUPPORT TO IT OR IF IT DISCRIMINATES AGAINST ANY PERSON BECAUSE OF HIS RACE, CREED, COLOUR, NATIONALITY, ANCESTRY OR PLACE OF ORIGIN.

THE RESPONDENT SUBMITS THAT IT HAS PARTICIPATED IN THE APPLICANT'S FORMATION OR HAS CONTRIBUTED FINANCIAL SUPPORT TO THE APPLICANT.

4. IN SUPPORT OF ITS SUBMISSION THE RESPONDENT RELIES ON ARTICLES 12, 13, 14 AND 15 OF THE COLLECTIVE AGREEMENT BETWEEN THE TWO PARTIES, WHICH ARTICLES PROVIDE AS FOLLOWS:

ARTICLE 12

HEALTH AND WELFARE CONTRIBUTION

EACH EMPLOYER SHALL CONTRIBUTE TO THE LOCAL 67 WELFARE PLAN FOR EACH HOUR'S PAY EARNED BY EACH OF HIS EMPLOYEES A SUM EQUAL TO:

ON JUNE 28, 197115¢
ON MAY 1, 197230¢

THE FUND SHALL BE ADMINISTERED BY A BOARD OF TRUSTEES TO BE APPOINTED BY THE UNION.

ARTICLE 13

PENSION PLAN CONTRIBUTION

EFFECTIVE JANUARY 1, 1972, EACH EMPLOYER SHALL CONTRIBUTE TO THE LOCAL 67 PENSION PLAN A SUM EQUAL TO TWENTY-FIVE (.25) CENTS FOR EACH HOUR'S PAY EARNED BY EACH OF HIS EMPLOYEES. THE PENSION PLAN SHALL BE ADMINISTERED BY A BOARD OF TRUSTEES TO BE APPOINTED BY THE UNION UNDER A TRUST AGREEMENT TO BE DRAWN UP BY THE UNION AS SOON AS POSSIBLE.

ARTICLE 14

SUPPLEMENTARY UNEMPLOYMENT BENEFIT

EACH CONTRACTOR SHALL CONTRIBUTE TO THE LOCAL 67 SUPPLEMENTARY UNEMPLOYMENT BENEFIT FUND A SUM EQUAL TO TEN (10) CENTS FOR EACH HOUR'S PAY EARNED BY EACH OF HIS EMPLOYEES.

THE FUND SHALL BE ADMINISTERED BY A BOARD OF TRUSTEES TO BE APPOINTED BY THE UNION.

ARTICLE 15

PROMOTION AND EDUCATION FUND

EACH CONTRACTOR SHALL CONTRIBUTE TO THE PROMOTION AND EDUCATION FUND ESTABLISHED BY THE ASSOCIATION TO ENCOURAGE INCREASED EMPLOYMENT AMONG MEMBERS OF THE UNION AND TO ADVANCE THE INDUSTRY, A SUM EQUAL TO FIVE (5) CENTS FOR EACH HOUR'S PAY EARNED BY EACH OF HIS EMPLOYEES. THE FUND SHALL BE ADMINISTERED BY THE BOARD OF DIRECTORS OF THE ASSOCIATION.

5. PURSUANT TO THESE ARTICLES, CONTRACTORS, BOUND BY THE AGREEMENT, MAKE PAYMENTS FOR HEALTH AND WELFARE, SUPPLEMENTARY UNEMPLOYMENT BENEFITS AND THE PROMOTION AND EDUCATION FUND TO THE EXCELSIOR LIFE, WHICH IN TURN TOTALS UP CONTRIBUTIONS AND FORWARDS A LIST OF THESE, ALONG WITH A CHEQUE FOR THE TOTAL AMOUNT, TO THE HAMILTON TRUST COMPANY. THIS LATTER COMPANY DEPOSITS THE CHEQUE IN ONE ACCOUNT AND FROM THE LIST PROVIDED BY EXCELSIOR LIFE, ISSUES CHEQUES TO EACH OF THOSE FUNDS. IN THE CASE OF THE PROMOTION AND EDUCATION FUND, THIS APPEARS TO BE THE GENERAL ACCOUNT OF THE APPLICANT ASSOCIATION. IT SEEMS CLEAR FROM EXHIBIT No. 11, THE APPLICANT'S FINANCIAL STATEMENT FOR THE YEAR ENDED MARCH 31, 1972, THAT OVER 90% OF THE APPLICANT'S RECEIPTS FOR 1971-72 CAME FROM CONTRIBUTIONS BY EMPLOYERS UNDER ARTICLE 15, AND IT IS A FAIR INFERENCE THAT SUCH FUNDS WERE USED, IN PART, TO DEFRAY EXPENSES INCURRED IN CONNECTION WITH THE APPLICANT'S INTENTION TO SEEK TO BECOME AN ACCREDITED EMPLOYERS' ORGANIZATION.

6. COUNSEL FOR THE RESPONDENT FIRST SUBMITTED THAT, HAVING REGARD TO THE SIMILARITY OF LANGUAGE IN THE FOUR ARTICLES OF THE COLLECTIVE AGREEMENT, AND, IN PARTICULAR, THE METHOD OF COMPUTING THE AMOUNTS CONTRIBUTED TO THE FOUR FUNDS, THE AMOUNT CONTRIBUTED TO THE PROMOTION AND EDUCATION FUND WAS REALLY A CONTRIBUTION BY EMPLOYEES. HE CONCEDED, HOWEVER, THAT THE FUND IN ARTICLE 15, UNLIKE THOSE PROVIDED FOR IN ARTICLES 13 AND 14, WAS ESTABLISHED BY THE APPLICANT. COUNSEL MADE NO ATTEMPT TO SHOW BY DIRECT EVIDENCE THAT THE AMOUNT CONTRIBUTED BY AN EMPLOYER TO THE PROMOTION AND EDUCATION FUND WAS REALLY A CONTRIBUTION BY HIS EMPLOYEES WHICH, IF NOT MADE, WOULD HAVE RESULTED IN AN ADDITIONAL FIVE CENTS AN HOUR IN WAGES FOR EACH EMPLOYEE. THUS, THERE WAS NO EVIDENCE CALLED TO SHOW THAT EMPLOYEES PAID INCOME TAX ON THIS AMOUNT. WHILE IT IS TRUE THAT ONE OF THE PURPOSES OF THE FUND IS TO ENCOURAGE INCREASED EMPLOYMENT AMONG MEMBERS OF THE UNION, THIS DOES NOT LEAD INEVITABLY TO THE CONCLUSION THAT THE CONTRIBUTION IS THEREFORE FROM EMPLOYEES. ANOTHER PURPOSE IS TO ADVANCE THE INDUSTRY, AND FURTHER, INCREASED EMPLOYMENT AMONG MEMBERS IS ALSO OF BENEFIT TO THE EMPLOYERS BECAUSE, OF COURSE, IT MEANS MORE CONTRACTS FOR EMPLOYERS. THE PLAIN FACT OF THE MATTER IS ON THE BASIS OF THE MATERIALS BEFORE US WE WOULD BE INDULGING IN SHEER SPECULATION IN FINDING THAT THESE AMOUNTS WERE EMPLOYEE CONTRIBUTIONS AND, IN THESE CIRCUMSTANCES, WE ARE UNABLE TO

CONCLUDE THAT THE SUMS CONTRIBUTED TO THE PROMOTION AND EDUCATION FUND ARE CONTRIBUTIONS BY EMPLOYEES. THUS, IT BECOMES UNNECESSARY TO DETERMINE IF THE SUMS CONTRIBUTED WERE REALLY EMPLOYEE CONTRIBUTIONS BECAUSE, OF COURSE, SECTION 115(5) DEALS WITH UNION, NOT EMPLOYEE, SUPPORT.

7. THE RESPONDENT'S SECOND ARGUMENT IS AS WE UNDERSTAND IT THAT IF THE SUMS CONTRIBUTED ARE NOT THE EMPLOYEES' OWN MONEY, NEVERTHELESS ONE OF THE PURPOSES OF THE FUND IS TO BENEFIT THE EMPLOYEES IN ENCOURAGING INCREASED EMPLOYMENT AMONG UNION MEMBERS. IT IS ARGUED THAT ARTICLE 15 GIVES TO MEMBERS OF THE UNION "ALMOST" A POSITION OF A CESTUI QUE TRUST, IN ANY EVENT, A REAL INTEREST IN HOW THE PROMOTION AND EDUCATIONAL FUND IS USED AND THAT INTEREST CONSTITUTES AN "INVOLUNTARY CONTRIBUTION" TO THE APPLICANT ASSOCIATION. FURTHER, SINCE THE RESPONDENT UNION HAS PARTICIPATED IN THE SETTING UP OF THE FUND, IT THEREBY CONTRIBUTES FINANCIAL OR OTHER SUPPORT TO THE APPLICANT.

8. AT THIS STAGE TWO OBSERVATIONS APPEAR TO BE IN ORDER. IN THE FIRST PLACE ON AN APPLICATION FOR ACCREDITATION IT IS NOT THE FUNCTION OF THIS BOARD TO BE CONCERNED WITH WHETHER THE FUND PROVIDED FOR IN ARTICLE 15 OF THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT HAS OR HAS NOT BEEN USED FOR THE PURPOSES SET OUT IN THE ARTICLE. WE MAKE THIS OBSERVATION BECAUSE OF THE NATURE OF SOME OF THE QUESTIONS PUT BY COUNSEL FOR THE RESPONDENT TO MR. WHYTE, THE EXECUTIVE DIRECTOR OF THE APPLICANT. IF THE RESPONDENT BELIEVES THAT ITS INTERESTS ARE IN JEOPARDY, NO DOUBT IT HAS AN APPROPRIATE REMEDY UNDER THE COLLECTIVE AGREEMENT OR BEFORE ANOTHER FORUM.

9. SECONDLY, WE THINK IT WORTH OBSERVING THAT IN ADVANCING THE ARGUMENT OF FINANCIAL OR OTHER SUPPORT TO THE APPLICANT, THE RESPONDENT IS IN ONE SENSE A PARTY TO THE ACTS WHICH IT IS ALLEGED PROHIBIT THE BOARD FROM ACCREDITING THE APPLICANT ASSOCIATION. WHILE SUCH CONDUCT IS NOT EXPRESSLY FORBIDDEN BY THE ACT, IT IS CLEAR FROM SECTION 115(5) THAT IT MUST BE REGARDED AS UNDESIRABLE CONDUCT AT THE VERY LEAST. IN A SENSE, THEREFORE, THE "CLEAN HANDS" DOCTRINE IS BROUGHT INTO PLAY, AT LEAST TO THIS EXTENT, THAT THE RESPONDENT SHOULD BE REQUIRED TO ESTABLISH THAT THE MATTERS ON WHICH IT RELIES CLEARLY FALL WITHIN SECTION 115(5).

10. WITH THIS BACKGROUND LET US NOW EXAMINE THE "INVOLUNTARY CONTRIBUTION" ARGUMENT IN MORE DETAIL. AS WE UNDERSTAND THE ARGUMENT OF COUNSEL FOR THE RESPONDENT, IT PROCEEDS ALONG THE FOLLOWING LINES: IF THE CONTRIBUTIONS TO THE PROMOTION AND EDUCATION FUND ARE NOT THOSE OF THE EMPLOYEES BUT RATHER OF THE EMPLOYERS, NEVERTHELESS THE FUND IS SET UP IN PART AT LEAST FOR THE BENEFIT OF THE EMPLOYEES. THEREFORE THE EMPLOYEES HAVE A REAL INTEREST IN THE FUND. THUS, WHEN THE APPLICANT ASSOCIATION USES THOSE FUNDS TO ASSIST IT IN MAKING THE APPLICATION FOR ACCREDITATION IT IS USING MONEY IN WHICH THE EMPLOYEES, AND THEREFORE THE UNION WHICH IS MADE UP OF THE EMPLOYEES, HAVE A REAL INTEREST. THIS "INVOLUNTARY CONTRIBUTION" CONSTITUTES FINANCIAL OR OTHER SUPPORT WITHIN THE MEANING OF SECTION 115(5) OF THE ACT. FURTHERMORE, THE RESPONDENT

UNION IN AGREEING TO SUCH A CLAUSE AS ARTICLE 15 OF THE COLLECTIVE AGREEMENT ALSO MAY BE SAID TO MAKE A CONTRIBUTION OF FINANCIAL OR OTHER SUPPORT TO THE APPLICANT.

11. COUNSEL FOR THE RESPONDENT ALSO ARGUED THAT THE USE OF THESE FUNDS BY THE APPLICANT TO MAKE THE PRESENT APPLICATION WAS IN VIOLATION OF ARTICLE 15 OF THE AGREEMENT. COUNSEL FOR THE APPLICANT COUNTERED WITH THE ARGUMENT THAT ONE OF THE PURPOSES OF THE FUND WAS "TO ADVANCE THE INDUSTRY" AND THAT THE LEGISLATION ESTABLISHING ACCREDITATION OF EMPLOYER ORGANIZATIONS WAS DESIGNED TO STRENGTHEN EMPLOYERS' ORGANIZATIONS IN RESPECT OF COLLECTIVE BARGAINING. A STRONGER EMPLOYERS' ORGANIZATION WOULD, IN TURN, BRING ABOUT MORE STABILITY IN THE COLLECTIVE BARGAINING SCENE AND THIS WAS SURELY ONE MEANS OF "ADVANCING THE INDUSTRY". AS WE INDICATED ABOVE, WE DO NOT BELIEVE IT IS THE FUNCTION OF THE BOARD TO DETERMINE WHETHER THERE HAS BEEN A BREACH OF ARTICLE 15. HOWEVER, IT APPEARS TO US THAT THE ARGUMENT OF COUNSEL FOR THE RESPONDENT DOES NOT STAND OR FALL ON WHETHER OR NOT THE FUNDS WERE USED BY THE APPLICANT IN VIOLATION OF ARTICLE 15. IF WE ASSUME THAT THE EMPLOYEES DO INDEED HAVE AN INTEREST IN THE FUNDS, THEN THE FUNDS HAVE IN FACT BEEN USED BY THE APPLICANT AND THE QUESTION IS, DOES SUCH USE, WHETHER IN VIOLATION OF ARTICLE 15 OR NOT, CONSTITUTE SUPPORT WITHIN THE MEANING OF SECTION 115(5)?

12. CAN IT BE SAID THAT THE "INVOLUNTARY CONTRIBUTION", WHICH IT IS ARGUED THE RESPONDENT TRADE UNION IS MAKING TO THE APPLICANT IN THE PRESENT CASE, IS LIKELY TO IMPAIR OR MAKE SUSPECT THE ABILITY OF THE APPLICANT TO FULFIL ITS DUTIES AND RESPONSIBILITIES AS AN ACCREDITED EMPLOYERS' ORGANIZATION? WE ARE NOT PERSUADED THAT SUCH IS THE CASE. WE ARE NOT DEALING HERE WITH ANY CONCRETE OR DIRECT CONTRIBUTION, IF IT IS A CONTRIBUTION, BUT RATHER WITH SOMETHING WHICH IS "INVOLUNTARY" AND INDIRECT. FURTHERMORE, AS WAS NOTED ABOVE, ANYTHING WHICH ADVANCES THE INDUSTRY OR ENCOURAGES INCREASED EMPLOYMENT AMONG MEMBERS IS AS MUCH FOR THE EMPLOYERS' BENEFIT AS IT IS FOR THE EMPLOYEES' OR TRADE UNION'S BENEFIT. IN THESE CIRCUMSTANCES, WE FAIL TO SEE HOW IT CAN BE SAID THAT THE APPLICANT'S ABILITY TO FULFIL ITS DUTIES AND RESPONSIBILITIES AS AN ACCREDITED EMPLOYERS' ORGANIZATION WOULD LIKELY BE IMPAIRED OR SUSPECT. WE THEREFORE FIND THAT THE "INVOLUNTARY CONTRIBUTION", IF INDEED IT BE ONE, DOES NOT CONSTITUTE THE TYPE OF SUPPORT WITHIN THE MEANING OF SECTION 115(5) WHICH WOULD PROHIBIT THE BOARD FROM ACCREDITING THE APPLICANT.

13. THE "INVOLUNTARY CONTRIBUTION" ARGUMENT ASSUMES, OF COURSE, THAT THE RESPONDENT TRADE UNION HAS IN FACT MADE A CONTRIBUTION AND IN DEALING WITH THAT ARGUMENT WE HAVE PROCEEDED ON THAT ASSUMPTION. WITHOUT IN ANY WAY ATTEMPTING TO MAKE ANY FORMAL FINDINGS WITH RESPECT TO THE MEANING OF ARTICLE 15 OF THE COLLECTIVE AGREEMENT, IT IS CLEAR FROM THAT ARTICLE THAT THE PROMOTION AND EDUCATION FUND IS INTENDED TO SERVE A DOUBLE PURPOSE. WE ARE IN CONSIDERABLE DOUBT AS TO WHETHER EITHER PURPOSES CAN BE SAID TO AMOUNT TO A CONTRIBUTION OR SUPPORT BY THE TRADE UNION OR WHETHER THE SIGNING OF THE AGREEMENT CONTAINING SUCH

A CLAUSE BY THE TRADE UNION IN ITSELF CONSTITUTES SUPPORT. AS WE POINTED OUT EARLIER, IN THE CIRCUMSTANCES HERE UNDER CONSIDERATION, IT IS FOR THE RESPONDENT TO SATISFY THE BOARD THAT THE MATTERS ON WHICH IT RELIES CLEARLY FALL WITHIN SECTION 115(5) AND WE ARE NOT SO SATISFIED. IN THE RESULT THEREFORE, WE FIND THAT SECTION 115(5) DOES NOT PROHIBIT THE BOARD FROM ACCREDITING THE APPLICANT.

14. THE APPLICANT ALSO FILED WITH THIS APPLICATION DOCUMENTS ENTITLED "EMPLOYER AUTHORIZATION" WHICH READ IN PART AS FOLLOWS:

THE LABOUR RELATIONS ACT

EMPLOYER AUTHORIZATION

"THE UNDERSIGNED...APPOINTS THE MECHANICAL CONTRACTORS ASSOCIATION - HAMILTON...TO REPRESENT THE EMPLOYER AS THE BARGAINING AGENT FOR ITSELF AND ALL OTHER EMPLOYERS IN REGARD TO THE EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT WITH LOCAL 67 - UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA IN THE FOLLOWING AREA(S) AND SECTOR(S) :

SEE APPENDIX "A" ATTACHED.

SECTORS: COMMERCIAL, RESIDENTIAL, INSTITUTIONAL INDUSTRIAL (JOINTLY OR SEPARATELY)

THE EMPLOYER FURTHER APPOINTS THE ASSOCIATION AS ITS AGENT AND REPRESENTATIVE TO MAKE AN APPLICATION FOR ACCREDITATION UNDER THE LABOUR RELATIONS ACT OF THE PROVINCE OF ONTARIO FOR THE GEOGRAPHIC AREA(S) AND SECTOR(S) ABOVE MENTIONED."

15. THESE DOCUMENTS ARE SIGNED BY THE EMPLOYER AND ATTACHED TO EACH DOCUMENT IS AN APPENDIX "A" WHICH SETS OUT THE GEOGRAPHIC AREA WHICH IS THE SUBJECT MATTER OF THIS APPLICATION. IN ADDITION TO THESE DOCUMENTS THE APPLICANT ALSO FILED A LIST OF EMPLOYERS SETTING OUT THE NAME, ADDRESS AND TELEPHONE NUMBER FOR EACH OF THE EMPLOYERS ON WHOSE BEHALF AN EMPLOYER AUTHORIZATION WAS SUBMITTED. THE BOARD THEREFORE FINDS THAT THE APPLICANT HAS SUBMITTED ACCEPTABLE EVIDENCE OF REPRESENTATION IN ACCORDANCE WITH SECTION 96 OF THE BOARD'S RULES OF PROCEDURE ON BEHALF OF 46 EMPLOYERS.

16. THE CONSTITUTION FILED BY THE APPLICANT TAKEN TOGETHER WITH THE EMPLOYER AUTHORIZATIONS FILED AS EVIDENCE OF REPRESENTATION VEST SUFFICIENT AUTHORITY IN THE APPLICANT TO ENABLE IT TO DISCHARGE THE RESPONSIBILITIES OF AN ACCREDITED EMPLOYERS' ORGANIZATION ON BEHALF OF THOSE EMPLOYERS WHOM THE APPLICANT SEEKS TO REPRESENT.

17. THE APPLICANT SEEKS TO COMBINE THE COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL SECTOR WITH THE RESIDENTIAL SECTOR. THE RESPONDENT IS IN AGREEMENT WITH THIS PROPOSAL. THE ONLY OPPOSITION COMES FROM INTERVENER #1, THE METROPOLITAN HOME BUILDERS ASSOCIATION. THE BOARD PERMITTED INTERVENER #1 TO PARTICIPATE IN THE PROCEEDINGS DESPITE THE FACT THAT NEITHER IT NOR ANY OF ITS MEMBERS HAD ANY BARGAINING RELATIONSHIP WITH THE RESPONDENT UNION. THE BOARD DID SO BECAUSE THE ACCREDITATION PROCEDURES ARE STILL IN THEIR EXPERIMENTAL STAGES, BECAUSE IT HAS PERMITTED "DISINTERESTED PARTIES" IN OTHER ACCREDITATION CASES TO TAKE PART IN THE PROCEEDINGS, AND FINALLY BECAUSE THE BOARD CONSIDERED INTERVENER #1 MIGHT HAVE EVIDENCE WHICH WOULD BE HELPFUL IN DEALING WITH THE MATTER AT HAND.

18. THE APPLICANT RESTS ITS CASE ON THE FACT THAT THE CURRENT COLLECTIVE AGREEMENT OF THE RESPONDENT UNION WITH THE APPLICANT COVERS BOTH SECTORS AND THAT SOME EMPLOYERS COVERED BY THE AGREEMENT DO WORK IN BOTH SECTORS. ADMITTEDLY, SUCH WORK IN THE RESIDENTIAL SECTOR IS RESTRICTED, IN THE EVIDENCE BEFORE US, TO A LITTLE CUSTOM HOUSING, JOBBING AND REPAIRS, BUT THE EMPLOYERS PERFORMING SUCH WORK ALSO WORK IN THE COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL SECTOR. IN OTHER WORDS, THERE IS INTERCHANGE OF SOME EMPLOYERS BETWEEN THE TWO SECTORS AND REGARDLESS OF THE SECTOR THE EMPLOYEES ARE COVERED BY THE SAME COLLECTIVE AGREEMENT.

19. ON THE OTHER HAND, IT IS CLEAR THAT THERE IS A VERY LARGE VOLUME OF SUB-DIVISION WORK AND APARTMENT BUILDING CARRIED ON IN THE HAMILTON AREA AND THAT VIRTUALLY NONE OF THIS WORK IS DONE BY EMPLOYERS WHO WOULD BE AFFECTED BY THIS ACCREDITATION APPLICATION. A VERY LARGE PROPORTION OF THIS WORK IS DONE BY MEMBERS OF INTERVENER #1. IT WAS SUBMITTED BY THAT INTERVENER THAT ALTHOUGH ITS MEMBERS WOULD NOT BE AFFECTED DIRECTLY BY ANY ACCREDITATION ORDER, SINCE NEITHER THE ASSOCIATION NOR ANY OF ITS MEMBERS HAD A BARGAINING RELATIONSHIP WITH THE RESPONDENT UNION, IT COULD BE INDIRECTLY AFFECTED IN THE FOLLOWING MANNER. IT WOULD BE OPEN TO THE ACCREDITED EMPLOYERS' ORGANIZATION AND THE UNION TO NEGOTIATE A HIGH RATE FOR THE RESIDENTIAL SECTOR AND THIS WOULD IN TURN BECOME AN "ORGANIZING TOOL" FOR THE RESPONDENT UNION IN THAT SECTOR WHICH IT WOULD APPEAR IS LARGELY NON-UNIONIZED.

20. WE HAVE DIFFICULTY IN FINDING MERIT IN THIS LAST SUBMISSION. IN OUR VIEW IT WOULD BE OPEN TO THE APPLICANT AND THE RESPONDENT TO DO THIS WHETHER OR NOT THE APPLICANT WAS ACCREDITED. IN ANY EVENT, EVEN IF INTERVENER #1 IS RIGHT, WE ARE UNABLE TO SEE HOW THIS BECOMES A VALID OBJECTION UNDER THE LEGISLATION IF THE APPLICANT IS OTHERWISE ENTITLED TO BE ACCREDITED FOR THE RESIDENTIAL SECTOR. FURTHERMORE, THE ARGUMENT IS, IN ANY EVENT, SPECULATIVE IN NATURE, AND IN ALL THE CIRCUMSTANCES, WE DECLINE TO ACCEPT IT AS A REASON FOR REFUSING TO COMBINE THE TWO SECTORS.

21. AN ARGUMENT AGAINST SUCH A COMBINATION WHICH WAS NOT MADE BY THE PARTIES BUT WHICH WE HAVE NEVERTHELESS CONSIDERED, CONCERNS THE EX-

TENT OF WORK PERFORMED BY EMPLOYERS AFFECTED BY THIS APPLICATION IN THE RESIDENTIAL SECTOR. ADMITTEDLY, THIS AMOUNTS TO ONLY AN INSIGNIFICANT PORTION OF THE TOTAL WORK PERFORMED IN THIS SECTOR. NEVERTHELESS, THE COLLECTIVE AGREEMENT IN QUESTION DOES COVER SUCH WORK AND SOME EMPLOYERS BOUND BY THE AGREEMENT DO WORK IN BOTH SECTORS. IF THE RESIDENTIAL SECTOR IS NOT INCLUDED, THEN FOR THE EXISTING CONTRACT THE APPLICANT IN ITS ACCREDITED CAPACITY WOULD ADMINISTER THAT PART OF IT IN THE ONE SECTOR BUT NOT IN THE OTHER. FURTHER AGREEMENTS WOULD HAVE TO BE NEGOTIATED SEPARATELY FOR THE TWO SECTORS AND, OF COURSE, WITH DIFFERENT CONSEQUENCES FLOWING THEREFROM. THUS, ONE DAY AN EMPLOYER MIGHT BE OPERATING UNDER ONE SET OF RULES AND UNDER ANOTHER ON THE NEXT DAY. IN FACT, THIS COULD HAPPEN ON THE SAME DAY. IN THE EVENT OF A LAWFUL STRIKE OR LOCKOUT THE UNION WOULD BE ENTITLED TO BARGAIN WITH INDIVIDUAL EMPLOYERS IN THE RESIDENTIAL SECTOR AND NOT IN THE INDUSTRIAL SECTOR. SIMILARLY, THE UNION WOULD BE ENTITLED TO LAWFULLY SUPPLY MEN TO THE RESIDENTIAL SECTOR BUT NOT TO THE INDUSTRIAL SECTOR.

22. THE QUESTION OF COMBINING SECTORS OR PARTS THEREOF IS A MATTER OF DISCRETION FOR THE BOARD UNDER SECTION 114. UP TO THE PRESENT TIME THE BOARD HAS HAD LITTLE EXPERIENCE IN DEALING WITH THIS QUESTION. IN ONE CASE THE BOARD REFUSED TO COMBINE SECTORS (THE ONTARIO ERECTORS ASSOCIATION V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 ET AL [1971] OLRB REP. (AUG.) 522 AT 525), AND IN ANOTHER (THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 ET AL [1971] OLRB REP. (NOV.) 719 AT 721), THE BOARD ACCEDED TO SUCH A REQUEST. THESE CASES DO NOT APPEAR TO BE OF ASSISTANCE IN THE PRESENT APPLICATION. ON BALANCE, WE DO NOT, ON THE BASIS OF THE EVIDENCE BEFORE US, SEE ANY SUBSTANTIAL REASONS FOR REFUSING TO COMBINE THE SECTORS REQUESTED IN THIS CASE. ACCORDINGLY, THE BOARD FURTHER FINDS THAT ALL EMPLOYERS OF EMPLOYEES ON WHOSE BEHALF THE RESPONDENT HAS BARGAINING RIGHTS IN THE FOLLOWING AREA, STARTING AT THE JUNCTION OF LAKE ONTARIO AND THE SEVENTH LINE IN THE TOWN OF OAKVILLE, THEN NORTH-WEST TO THE QUEEN ELIZABETH HIGHWAY, THEN THE EIGHT LINE NORTH-WEST TO HIGHWAY NUMBER 401 JUST BEYOND HORNBY, JOIN THIS POINT TO FREELTON ON HIGHWAY NO. 6, THEN NORTH-WEST ON HIGHWAY NUMBER 6 TO THE WELLINGTON-WENTWORTH COUNTY LINE JUST SOUTH OF PUSLINCH, THEN FOLLOW THE WELLINGTON-WENTWORTH COUNTY LINE GENERALLY WESTERLY TO WHERE IT MEETS THE WATERLOO COUNTY LINE JUST EAST OF GALT, FROM THIS POINT FOLLOW THE WENTWORTH COUNTY LINE GENERALLY SOUTH TO WHERE IT ANGLES SOUTH-EAST TO NORTH SENCA ON HIGHWAY NUMBER 6 JUST NORTH OF CALEDONIA, FROM THIS POINT FOLLOW HIGHWAY NUMBER 6 TO PORT DOVER, THEN FOLLOW THE LAKE ERIE SHORELINE TO THE BORDER LINE BETWEEN SOUTH CAYUGA AND DUNN TOWNSHIP IN THE COUNTY OF HALDIMAND, JUST EAST OF THE VILLAGE OF SOUTH CAYUGA, THEN NORTH TO THE LINCOLN COUNTY LINE AT CAISTORVILLE, THEN NORTH-WEST ALONG THE LINCOLN-HALDIMAND COUNTY LINE TO THE POINT WHERE IT MEETS THE WENTWORTH COUNTY LINE THEN TO LAKE ONTARIO, FOLLOW THE SHORELINE OF LAKE ONTARIO TO THE STARTING POINT AT OAKVILLE, IN THE COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL SECTOR AND RESIDENTIAL SECTOR,

CONSTITUTE AN APPROPRIATE UNIT OF EMPLOYERS FOR COLLECTIVE BARGAINING.

23. IN AN APPLICATION FOR ACCREDITATION SECTION 115(1) OF THE ACT REQUIRES THE BOARD TO ASCERTAIN CERTAIN NUMBERS IN ORDER TO MAKE A "DOUBLE MAJORITY" DETERMINATION OF THE WISHES OF EMPLOYERS IN THE UNIT OF EMPLOYERS. THIS RAISES THE PRELIMINARY QUESTION OF WHO IS IN THE UNIT OF EMPLOYERS? THE BOARD'S RULES OF PROCEDURE REQUIRE THE RESPONDENT TRADE UNION TO FILE LISTS OF EMPLOYERS WITH WHOM IT HAS A COLLECTIVE BARGAINING RELATIONSHIP RELATING TO THE GEOGRAPHIC AREA AND SECTORS WHICH ARE THE SUBJECT MATTER OF THE APPLICATION. THESE LISTS, TOGETHER WITH THE LISTS FILED BY THE APPLICANT SET OUT THE NAMES OF ALL THE EMPLOYERS, WHICH THE APPLICANT AND THE RESPONDENT CLAIM HAVE AN INTEREST IN THE PROCEEDINGS. AFTER A CONSULTATION BETWEEN THE PARTIES AND A BOARD EXAMINER, THE BOARD PREPARES A LIST OF EMPLOYERS ON THE BASIS OF THE MATERIALS BEFORE IT; THESE ARE IN THE FORM OF REVISED SCHEDULE "E" AND REVISED SCHEDULE "F". REVISED SCHEDULE "E" CONTAINS THE NAMES OF ALL THOSE EMPLOYERS WHICH THE PARTIES CLAIM ARE IN THE UNIT AND WHO HAVE HAD EMPLOYEES IN THE YEAR PRECEDING THE APPLICATION, AND THUS THE GROUP OF EMPLOYERS WHOSE WISHES ARE CONSIDERED IN MAKING THE ACCREDITATION DETERMINATION. REVISED SCHEDULE "F" CONTAINS THE NAMES OF THOSE EMPLOYERS IN THE UNIT BUT WHO HAVE NOT HAD EMPLOYEES WITHIN SUCH YEARLY PERIOD. EACH SUCH EMPLOYER IS ASSIGNED A NUMBER ON THE SCHEDULE AND TO AVOID CONFUSION THE PRACTICE IS TO REFER TO THIS NUMBER TOGETHER WITH THE NAME OF THE EMPLOYER WHEN REFERRING TO A PARTICULAR EMPLOYER. THE REVISED SCHEDULES TAKEN TOGETHER THUS SET OUT THE NAMES OF ALL EMPLOYERS WHICH ACCORDING TO THE REPRESENTATIONS OF THE APPLICANT AND RESPONDENT ARE AFFECTED BY ANY POSSIBLE ACCREDITATION ORDER. THESE SCHEDULES ALSO MAKE A PRELIMINARY ASSESSMENT AS TO WHICH EMPLOYERS FALL INTO THE CATEGORY OF EMPLOYERS SET OUT IN SECTION 115(1)(c) AS THE EMPLOYERS WHO DETERMINE THE REPRESENTATIVE STATUS OF THE APPLICANT.

24. HAVING DETERMINED ALL THOSE EMPLOYERS WHO MIGHT HAVE AN INTEREST IN THE APPLICATION THE BOARD THEN REQUIRES THE REGISTRAR TO SERVE EACH OF THESE EMPLOYERS WITH NOTICE OF THE APPLICATION IN FORM 67. SECTION 87 OF THE BOARD'S RULES OF PROCEDURE REQUIRES THAT EACH EMPLOYER GIVEN SUCH NOTICE FILE AN EMPLOYER INTERVENTION IN FORM 68 TOGETHER WITH A COMPLETED SCHEDULE "H". THE EMPLOYER INTERVENTION IS THE VEHICLE BY WHICH AN INDIVIDUAL EMPLOYER HAS THE OPPORTUNITY TO MAKE HIS REPRESENTATIONS TO THE BOARD. IT MAY BE THAT SOME EMPLOYERS TAKE THE POSITION THAT THEY HAVE NO REPRESENTATIONS TO MAKE CONCERNING THE APPLICATION, AND THUS THEY IGNORE THE MANDATORY DIRECTIVE IN SECTION 87 OF THE BOARD'S RULES OF PROCEDURE. THE RESULT IS THAT THE BOARD WOULD NOT HAVE SUFFICIENT MATERIALS BEFORE IT TO MAKE THE DETERMINATION REQUIRED IN SECTION 115(1) OF THE ACT. THE BOARD HAS THEREFORE ADOPTED THE PRACTICE OF UTILIZING ITS FIELD STAFF TO CONTACT THE VARIOUS EMPLOYERS WHO HAVE FAILED TO MAKE THE REQUIRED FILINGS, IN ATTEMPTS TO OBTAIN THE NECESSARY INFORMATION. THIS INFORMATION IS THEN TREATED AS THE REPRESENTATIONS OF THE INDIVIDUAL EMPLOYERS WITH RESPECT TO THE VARIOUS MATTERS TO BE DEALT WITH BY THE BOARD. UNFORTUNATELY, DESPITE THE REPEATED EFFORTS OF THE BOARD'S STAFF TO CONTACT CERTAIN EMPLOYERS

THERE REMAINS A NUMBER OF EMPLOYERS WHO HAVE NOT OR WILL NOT MAKE THE FILINGS REQUIRED BY THE BOARD'S RULES. THESE EMPLOYERS HAVE BEEN GIVEN DETAILED NOTICE OF THE APPLICATION AND HAVE BEEN WARNED THAT THE BOARD MAY DISPOSE OF THE APPLICATION ON THE BASIS OF THE MATERIALS THEN BEFORE IT IF THE INDIVIDUAL EMPLOYER FAILS TO MAKE THE REQUIRED FILINGS. IN THESE INSTANCES THE BOARD PROPOSES TO RELY ON THE REPRESENTATIONS AND FILINGS OF THE APPLICANT AND THE RESPONDENT IN ORDER TO MAKE THE DETERMINATIONS REQUIRED BY THE ACT. -IN THE PRESENT CASE, THE NUMBER OF EMPLOYERS LISTED ON REVISED SCHEDULE "E" AND 67 AND ON REVISED SCHEDULE "F" WAS 52. THESE EMPLOYERS WERE SERVED WITH NOTICE OF THE APPLICATION AND A RESPONSE WAS RECEIVED FROM 106 IN THE FORM OF A DIRECT FILING WITH THE BOARD OR BY FILING THE INFORMATION WITH A BOARD MEMBER OF THE BOARD'S STAFF. THE REMAINING 13 EMPLOYERS HAVE NOT MADE SUCH A FILING AND ARE DEALT WITH IN PARAGRAPH 27 BELOW.

25. SECTION 115(1) REQUIRES THE BOARD TO MAKE A NUMBER OF SIGNIFICANT DETERMINATIONS WITH RESPECT TO EACH EMPLOYER SERVED WITH NOTICE OF THE APPLICATION. WHERE THE INDIVIDUAL EMPLOYER HAS MADE THE REQUIRED FILINGS THE BOARD MUST CONSIDER THE POSITION TAKEN BY EACH OF THE THREE PARTIES CONCERNED, THE APPLICANT, THE RESPONDENT AND THE PARTICULAR EMPLOYER IN QUESTION. WHERE THERE IS AGREEMENT AMONGST THESE THREE PARTIES, NO PROBLEM ARISES IN MAKING THE VARIOUS STATUTORY DETERMINATIONS REQUIRED BY THE ACT. ON THE OTHER HAND, THE BOARD MAY BE FACED WITH CONFLICTING POSITIONS AS TO THE FINDINGS THE BOARD SHOULD MAKE WITH RESPECT TO AN INDIVIDUAL EMPLOYER. WHEN FACED WITH SUCH CONFLICTING REPRESENTATIONS, IN THE ABSENCE OF EVIDENCE TO THE CONTRARY, THE BOARD PROPOSES TO RELY ON THE REPRESENTATIONS MADE BY THE INDIVIDUAL EMPLOYER AS TO HOW THAT INDIVIDUAL EMPLOYER SHOULD BE TREATED FOR THE PURPOSES OF SECTION 115. THUS, IF EITHER THE APPLICANT OR THE RESPONDENT CHOSE TO CHALLENGE THE POSITION TAKEN BY AN INDIVIDUAL EMPLOYER IT IS INCUMBENT UPON THEM TO PRESENT THE BOARD WITH SOME EVIDENCE UPON WHICH THE BOARD CAN MAKE THE PROPOSED FINDING. THE INDIVIDUAL EMPLOYERS HAVE BEEN GIVEN NOTICE OF THE INITIAL HEARING IN THIS MATTER TOGETHER WITH A WARNING THAT UNLESS THEY ATTEND THE HEARING THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT CONSIDERING THE REPRESENTATIONS SET OUT IN THE EMPLOYER INTERVENTION (SEE FORM 67). THUS, THE EMPLOYER WHO TAKES ISSUE WITH THE STATEMENT IN PARAGRAPH 3 OF FORM 67, THAT HE MAY BE FOUND TO BE AN EMPLOYER IN THE UNIT OF EMPLOYERS, HAS BEEN PUT ON NOTICE THAT THE REPRESENTATIONS CONTAINED IN FORM 68 MAY NOT BE ENOUGH, AND IN PARTICULAR, IF THE APPLICANT OR THE RESPONDENT HAVE EVIDENCE TO CONTRADICT THE REPRESENTATIONS CONTAINED IN A FORM 68, THE INDIVIDUAL EMPLOYER IGNORES THE WARNING IN FORM 67 AT HIS OWN PERIL.

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38. THE NATURE OF THE WRITTEN EVIDENCE OF REPRESENTATION OF EMPLOYERS BY THE APPLICANT WAS DESCRIBED IN PARAGRAPH 14 SUPRA. ON THE BASIS OF ALL THE EVIDENCE BEFORE US, THE BOARD FINDS THAT ON THE DATE OF THE MAKING OF THE APPLICATION THE APPLICANT REPRESENTED THIRTY-FIVE OF THE FIFTY EMPLOYERS ASCERTAINED AS THE NUMBER OF EMPLOYERS UNDER SECTION 115(1)(A) OF THE ACT. THE FIFTY EMPLOYERS SO REPRESENTED BY

THE APPLICANT IS THE NUMBER OF EMPLOYERS TO BE ASCERTAINED BY THE BOARD UNDER SECTION 115(1)(B) OF THE ACT. ACCORDINGLY, THE BOARD IS SATISFIED THAT A MAJORITY OF THE EMPLOYERS IN THE UNIT OF EMPLOYERS ARE REPRESENTED BY THE APPLICANT EMPLOYERS' ORGANIZATION.

39. THE ENTITLEMENT OF AN EMPLOYERS' ORGANIZATION TO ACCREDITATION IS BASED ON A "DOUBLE-MAJORITY". WE HAVE NOW DEALT WITH THE FIRST OF THE MAJORITIES THAT AN APPLICANT MUST OBTAIN, A MAJORITY OF EMPLOYERS IN THE UNIT OF EMPLOYERS. WE NOW TURN TO THE MATTER OF WHETHER THESE EMPLOYERS REPRESENT A MAJORITY OF THE EMPLOYEES INVOLVED. BY SECTION 115(1)(C) THE BOARD MUST ASCERTAIN THE FOLLOWING:

THE NUMBER OF EMPLOYEES OF EMPLOYERS IN CLAUSE (A) ON THE PAYROLL OF EACH SUCH EMPLOYER FOR THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING THE DATE OF THE APPLICATION OR IF, IN THE OPINION OF THE BOARD, SUCH PAYROLL PERIOD IS UNSATISFACTORY FOR ANY ONE OR MORE OF THE EMPLOYERS IN CLAUSE (A), SUCH OTHER WEEKLY PAYROLL PERIOD FOR ANY ONE OR MORE OF THE SAID EMPLOYERS AS THE BOARD CONSIDERS ADVISABLE.

EACH OF THE EIGHTY-FIVE EMPLOYERS ON SCHEDULE "E" SET OUT IN PARAGRAPH 37 ABOVE HAS SUBMITTED WITH HIS EMPLOYER INTERVENTION A SCHEDULE "H" CONTAINING THE NAMES OF HIS EMPLOYEES, IF ANY, AFFECTED BY THE APPLICATION. BY SECTION 115(1)(C) THE RELEVANT WEEKLY PAYROLL PERIOD IS PRIMA FACIE THE WEEK IMMEDIATELY PRECEDING OCTOBER 29, 1971, THE DATE OF THE MAKING OF THIS APPLICATION. PARAGRAPH 5 OF FORM 68, EMPLOYER INTERVENTION, READS AS FOLLOWS:

5. THE INTERVENER STATES THAT THE NUMBER OF EMPLOYEES ON THE PAYROLL FOR THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING THE DATE OF THE APPLICATION
 - *IS REPRESENTATIVE OF THE NUMBER OF EMPLOYEES
 - *IS NOT AFFECTED BY THIS APPLICATION NORMALLY EMPLOYED BY THE INTERVENER. (WHERE THE NUMBER IS NOT REPRESENTATIVE, GIVE DETAILS)

*STRIKE OUT IF NOT APPLICABLE.

THIS, OF COURSE, ALLOWS THE INDIVIDUAL EMPLOYER TO MAKE REPRESENTATIONS TO THE BOARD CONCERNING A MORE APPROPRIATE WEEKLY PAYROLL PERIOD. ON THE BASIS OF FURTHER MATERIALS FILED WITH THE BOARD IN THIS MATTER THE BOARD IS OF THE OPINION THAT THE WEEKLY PAYROLL PERIOD FOR EACH OF THESE EMPLOYERS SHOULD BE THE PERIOD WITH THE NUMBER OF EMPLOYEES CLOSEST TO THE AVERAGE OF THE THREE LISTS FILED BY EACH EMPLOYER. ...

40. ON THE BASIS OF ALL THE EVIDENCE BEFORE IT AND IN ACCORDANCE WITH THE FOREGOING CONSIDERATIONS, THE BOARD FINDS THAT THERE WERE 993 EMPLOYEES AFFECTED BY THE APPLICATION. THE 993 EMPLOYEES IS THE NUMBER OF EMPLOYEES TO BE ASCERTAINED BY THE BOARD UNDER SECTION 115(1)(c) OF THE ACT.

41. THE BOARD FURTHER FINDS THAT THE THIRTY-FIVE EMPLOYERS REPRESENTED BY THE APPLICANT EMPLOYERS' ORGANIZATION EMPLOYED A TOTAL OF 909 EMPLOYEES IN THE WEEKLY PAYROLL PERIODS DETERMINED IN PARAGRAPH 39 AS THE PAYROLL PERIOD FOR THE PURPOSES OF SECTION 115(1)(c) OF THE ACT. THE BOARD IS THEREFORE SATISFIED THAT THE MAJORITY OF EMPLOYERS REPRESENTED BY THE APPLICANT EMPLOYED A MAJORITY OF EMPLOYEES AS ASCERTAINED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 115(1)(c) OF THE ACT.

42. HAVING REGARD TO ALL THE ABOVE FINDINGS, A CERTIFICATE OF ACCREDITATION WILL ISSUE TO THE APPLICANT FOR THE UNIT OF EMPLOYERS FOUND TO BE THE APPROPRIATE UNIT OF EMPLOYERS IN PARAGRAPH 22 AND, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 115(2) OF THE ACT, FOR SUCH OTHER EMPLOYERS FOR WHOSE EMPLOYEES THE RESPONDENT MAY AFTER OCTOBER 29, 1971, OBTAIN BARGAINING RIGHTS THROUGH CERTIFICATION OR VOLUNTARY RECOGNITION IN THE GEOGRAPHIC AREA AND SECTOR SET OUT IN THE APPROPRIATE UNIT OF EMPLOYERS.

2639-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) v. POLYMER CORPORATION LIMITED BUILDING SYSTEMS DIVISION (RESPONDENT) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, A.F.L.-C.I.O.-C.L.C., UNITED ASSOCIATION OF PLUMBERS & APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES & CANADA, A.F.L.-C.I.O.-C.L.C., INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC (INTERVENERS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: FRED G. GRIGSBY FOR THE APPLICANT; J. W. HEALY, Q.C., F. MALTBY AND D. JAMESON FOR THE RESPONDENT; T. G. HARKNESS FOR THE CARPENTERS' AND PLUMBERS' UNIONS AND A. G. MATTHEWS FOR THE I.B.E.W.

DECISION OF THE BOARD:

NOVEMBER 1, 1972.

1. THE RESPONDENT AND THE INTERVENERS ENTERED INTO A COLLECTIVE AGREEMENT WHICH READS IN PART AS FOLLOWS:

ARTICLE 1 - RECOGNITION

1.01 THE EMPLOYER RECOGNIZES THE UNION AS THE SOLE AND EXCLUSIVE BARGAINING AGENCY FOR ALL OF ITS PRODUCTION AND MAINTENANCE EMPLOYEES WHO ARE

EMPLOYED AT ITS PLANT IN THE TOWN OF MILTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, EMPLOYEES ENGAGED AS OFFICE STAFF, SECURITY GUARDS, STUDENTS, AND PERSONS REGULARLY EMPLOYED FOR TWENTY-FOUR (24) HOURS OR LESS PER WEEK. UNLESS OTHERWISE AGREED BETWEEN THE PARTIES, ANY EMPLOYEE OF THE COMPANY WHO IS ENGAGED IN THE HAULING OR TRANSPORTATION OF CONSTRUCTION UNITS MANUFACTURED BY THE EMPLOYER SHALL NOT BE COVERED BY THIS COLLECTIVE AGREEMENT.

ARTICLE 2 - UNION SECURITY

2.02 THE EMPLOYER AGREES THAT ALL PERSONS HIRED SHALL BECOME MEMBERS IN GOOD STANDING OF ONE OF THE THREE UNIONS WITHIN FORTY-FIVE (45) DAYS AFTER HIRING.

ARTICLE 22 - HEALTH AND WELFARE PROGRAMME

22.01 THE EMPLOYER SHALL PROVIDE THE FOLLOWING BENEFITS FOR ALL EMPLOYEES COVERED BY THIS AGREEMENT WHO HAVE COMPLETED THE PROBATIONARY PERIOD. THE COVERAGE FOR BENEFITS ON ANY GOVERNMENT HEALTH PROGRAMMES IS DEPENDENT ON STATUTORY REGULATIONS:

- (A) WEEKLY INDEMNITY - THE PLAN SHALL BE BASED ON PAYMENT OF \$100 A WEEK FOR CARPENTER, PLUMBER, ELECTRICIAN, PRODUCTION WORKER #1, PRODUCTION WORKER #2, STATIONARY ENGINEER 2ND CLASS AND STATIONARY ENGINEER 3RD CLASS ...

SCHEDULE 'A' (CONTINUED)

CLASSIFICATION	WAGE RATE EFFECTIVE DATE OF SIGNING	WAGE RATE EFFECTIVE 1 YEAR FROM DATE OF SIGNING
STATIONARY ENGINEER 2ND CLASS	4.65	4.85
STATIONARY ENGINEER 3RD CLASS	4.15	4.35

SHIFT DIFFERENTIAL:

AFTERNOON SHIFTS 10¢
NIGHT SHIFTS 15¢

2. THE APPLICANT CALLED AS A WITNESS A THIRD CLASS ENGINEER WHO COMMENCED HIS EMPLOYMENT WITH THE RESPONDENT ON JUNE 26, 1972 AND WHO WAS ACCORDINGLY NOT EMPLOYED BY THE RESPONDENT AT THE TIME THE COLLECTIVE AGREEMENT REFERRED TO ABOVE WAS ENTERED INTO.

3. UNION DUES HAVE NEVER BEEN DEDUCTED FROM THE WITNESS SINCE HE COMMENCED HIS EMPLOYMENT WITH THE RESPONDENT AND IT WAS HIS INFORMATION THAT A SIMILAR SITUATION PERTAINED TO OTHER STATIONARY ENGINEERS. APART FROM THE ISSUE OF UNION DUES ALL OTHER PROVISIONS OF THE COLLECTIVE AGREEMENT WERE APPLIED TO THE STATIONARY ENGINEERS AS THEREIN SET OUT.

4. THIS APPLICATION WAS MADE BY THE APPLICANT ON OCTOBER 5, 1972.

5. WHILE IT MAY BE THAT THE RESPONDENT HAS BEEN REMISS IN DEDUCTING UNION DUES FROM THE STATIONARY ENGINEERS AS REQUIRED BY THE COLLECTIVE AGREEMENT AND WHILE IT ALSO MAY BE THAT THE INTERVENER UNIONS HAVE NOT REQUIRED THE STATIONARY ENGINEERS TO SIGN CHECK-OFF CARDS, ALL OTHER PROVISIONS OF THE COLLECTIVE AGREEMENT WOULD APPEAR TO APPLY TO THE STATIONARY ENGINEERS. SINCE THE APPLICANT FAILED TO CALL ANY EVIDENCE WHICH WOULD ESTABLISH THAT THE COLLECTIVE AGREEMENT WAS NOT INTENDED TO COVER THE STATIONARY ENGINEERS, WE ACCORDINGLY FIND THAT THE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENERS COVERS THE STATIONARY ENGINEERS WHOM THE APPLICANT NOW SEEKS TO REPRESENT. SINCE THIS APPLICATION WAS MADE JUST OVER FIVE MONTHS AFTER THE COLLECTIVE AGREEMENT WAS ENTERED INTO, PURSUANT TO THE PROVISIONS OF SECTIONS 5 AND 53 OF THE LABOUR RELATIONS ACT, WE FIND THAT THIS APPLICATION IS UNTIMELY AND IS ACCORDINGLY DISMISSED.

2452-72-M: CITY OF STRATFORD (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1385 (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

APPEARANCES AT THE HEARING: MICHAEL E. MITCHELL FOR THE APPLICANT; M. PENNESI, P. SENAY AND W. A. ACTON FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 2, 1972.

1. THIS IS AN APPLICATION UNDER SECTION 95(2) OF THE LABOUR RELATIONS ACT WHEREIN THE APPLICANT HAS REQUESTED THE BOARD TO DETERMINE WHETHER W. J. BYRICK, A PERSON CLASSIFIED AS DEPUTY SOCIAL ASSISTANT ADMINISTRATOR, AND JAMES LINTON, A PERSON CLASSIFIED AS DEPUTY DIRECTOR OF RECREATION, ARE EMPLOYEES OF THE APPLICANT FOR THE PURPOSES OF THE ACT.

2. THE RESPONDENT UNION HAS OPPOSED THIS APPLICATION. WITH RESPECT TO MR. BYRICK, THE RESPONDENT TAKES THE POSITION THAT AN ARBITRATION BOARD HAS RULED UPON THE POSITION OCCUPIED BY HIM AND FOUND THAT HE IS AN EMPLOYEE OF THE APPLICANT COVERED BY THE PROVISIONS OF THE COLLEC-

TIVE AGREEMENT. WITH RESPECT TO MR. LINTON, THE RESPONDENT TAKES THE VIEW THAT WHILE THE TITLE TO THE CLASSIFICATION PRESENTLY HELD BY MR. LINTON HAS BEEN CHANGED, HIS DUTIES AND RESPONSIBILITIES ARE SIMILAR TO THOSE OF PROGRAMME DIRECTOR WHICH WAS A POSITION INCLUDED IN THE BARGAINING UNIT COVERED BY THE COLLECTIVE AGREEMENT.

3. WHILE IT MAY BE THAT THE CHAIRMAN OF THE BOARD OF ARBITRATION DEALING WITH THE POSITION HELD BY MR. BYRICK MISDIRECTED HIMSELF IN LIGHT OF THE DECISION OF THE COURT OF APPEAL IN RE CANADIAN INDUSTRIES LTD. AND INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF UNITED STATES AND CANADA, LOCAL 13328 [1972] 3 O.R. 63, THIS BOARD CANNOT SIT AS AN APPELLATE TRIBUNAL WITH RESPECT TO THE AWARD OF THE BOARD OF ARBITRATION. THE FACT REMAINS THAT A BOARD OF ARBITRATION FOUND THE POSITION OF MR. BYRICK WAS A POSITION INCLUDED IN THE BARGAINING UNIT REPRESENTED BY THE RESPONDENT UNION. THE PARTIES ARE BOUND BY THE ARBITRATION AWARD AND THIS BOARD IS LIKEWISE BOUND FOR THE PURPOSE OF THIS DISPUTE. THIS APPLICATION IS THERE DISMISSED WITH RESPECT TO THE POSITION HELD BY MR. BYRICK.

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2293-72-U: WILLIAM STOUTLEY (COMPLAINANT) V. BARTENDERS & WAITERS UNION LOCAL 280 AND EL MOCAMBO TAVERNE (RESPONDENTS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

DECISION OF THE BOARD:

NOVEMBER 2, 1972.

1. PURSUANT TO THE DECISION OF THE BOARD IN THIS MATTER DATED OCTOBER 5, 1972, THE BOARD FOUND THAT FRANK CORTESE AND HENCE THE RESPONDENT, BARTENDERS & WAITERS UNION LOCAL 280, IN FAILING TO ADVISE THE COMPLAINANT WILLIAM STOUTLEY OF HIS RIGHTS CONCERNING THE FURTHER PROCESSING OF HIS GRIEVANCE, ACTED IN AN ARBITRARY MANNER IN THE REPRESENTATION OF THE SAID COMPLAINANT AND PURSUANT TO THE PROVISIONS OF SECTION 79(4)(c) OF THE LABOUR RELATIONS ACT ORDERED COMPENSATION ON HIS BEHALF EFFECTIVE FROM JUNE 3, 1972.

2. AT THE HEARING OF THIS MATTER ON SEPTEMBER 22, 1972, MR. CORTESE APPEARED ON BEHALF OF THE RESPONDENT UNION AND WAS NOT REPRESENTED BY COUNSEL. UPON DIRECT QUESTIONING BY THE BOARD AS TO WHETHER THE GRIEVANCE IN QUESTION COULD STILL BE PROCESSED TO ARBITRATION, MR. CORTESE AGREED WITH MR. TAIT, COUNSEL FOR THE RESPONDENT EL MOCAMBO TAVERNE, THAT THE RESPONDENT UNION HAD UNDERTAKEN NOT TO PROCEED FURTHER WITH THE GRIEVANCE TO ARBITRATION. IT WAS ON THE BASIS OF THESE REPRESENTATIONS THAT THE BOARD PREMISED ITS DECISION OF OCTOBER 5, 1972, IN THIS MATTER.

3. IT WOULD APPEAR THAT SUBSEQUENT TO THE RECEIPT OF THE BOARD'S DECISION IN THIS MATTER, THE RESPONDENT UNION RETAINED THE SERVICES OF

COUNSEL WHO BY LETTER DATED OCTOBER 25, 1972, REQUESTS THE BOARD TO NOW RECONSIDER ITS DECISION ON THE BASIS, INTER ALIA, THAT "...THE UNION HAS DETERMINED TO BRING THE MATTER OF HIS (MR. STOUTLEY) DISCHARGE TO ARBITRATION AND FOR THAT PURPOSE HAS RETAINED THE SERVICES OF LEGAL COUNSEL TO CONDUCT THE ARBITRATION HEARING."

4. THE BOARD PROCEEDED UPON THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES AS ADDUCED AT THE HEARING. TO PERMIT THE RESPONDENT UNION TO NOW, IN EFFECT, AMEND ITS REPRESENTATIONS WOULD MAKE PROCEEDINGS BEFORE THE BOARD INTERMINABLE AND INCONCLUSIVE. IN OUR OPINION, IT WOULD NOT SERVE THE BEST INTERESTS OF LABOUR RELATIONS IF THE BOARD WERE TO PERMIT A PARTY TO ALLEGE DIFFERENT FACTS ONCE IT HAD RECEIVED A DECISION OF THE BOARD WHICH WAS BASED UPON CERTAIN FACTS INITIALLY SUPPLIED BY THE SAME PARTIES.

5. THE BOARD HAS CAREFULLY REVIEWED THE REMAINDER OF THE REPRESENTATIONS AS EMBODIED IN THE SAID LETTER OF COUNSEL FOR THE RESPONDENT UNION AND WE FIND THAT IT CONTAINS NO ARGUMENT OR EVIDENCE WHICH WAS NOT PRESENTED OR WAS NOT REASONABLY AVAILABLE TO THE RESPONDENT UNION AT THE TIME OF THE HEARING.

6. THE BOARD, THEREFORE, IN THESE CIRCUMSTANCES DOES NOT CONSIDER IT ADVISABLE TO VARY OR REVOKE ITS DECISION IN THIS MATTER DATED OCTOBER 5, 1972.

2715-72-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES -
LOCAL 1891 (APPLICANT) v. DURABLE DRYWALL LTD. (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE
AND E. BOYER.

DECISION OF THE BOARD: NOVEMBER 2, 1972.

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5. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT IS SEEKING CERTIFICATION FOR A BARGAINING UNIT OF ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL. HOWEVER, IN ADDITION, THE APPLICANT SOUGHT TO HAVE THE BOARD INCLUDE A CLARITY NOTE IN ITS DECISION TO THE EFFECT THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT REQUESTED BY THE APPLICANT.

6. THE APPLICANT AND THE RESPONDENT AGREE THAT THEY ARE SIGNATORIES TO A COLLECTIVE AGREEMENT WHICH WAS EFFECTIVE FROM SEPTEMBER 1, 1970 UNTIL JUNE 30, 1972 AND THEREAFTER FROM YEAR TO YEAR SUBJECT TO NOTICE. IN THIS COLLECTIVE AGREEMENT THE RESPONDENT RECOGNIZED THE APPLICANT AS THE SOLE BARGAINING AGENT FOR "ALL DRYWALL TAPERS MECHANICS AND TRAINEES". THIS COLLECTIVE AGREEMENT ALSO RECITES THAT IT SHALL APPLY THROUGHOUT ONTARIO

ON ALL APARTMENTS AND MAISONETTES. IT THEREFORE APPEARS TO THE BOARD THAT THE DRYWALL TAPERS WHOM THE APPLICANT SEEKS TO INCLUDE IN ITS PROPOSED BARGAINING UNIT ARE ALREADY COVERED BY THIS COLLECTIVE AGREEMENT. THE BOARD NOTES THAT NEITHER THE APPLICANT NOR THE RESPONDENT HAVE REQUESTED A HEARING OF THIS APPLICATION. THE JOB AFFECTED BY THIS APPLICATION IS AN APARTMENT PROJECT.

7. HAVING REGARD TO THE FOREGOING, THE BOARD FURTHER FINDS THAT ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE AGREEMENT.

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1697-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) v. CANADIAN UNION OF COMMUNICATION WORKERS (INTERVENER #1) v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER #2).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H. ADE AND O. HODGES.

DECISION OF THE BOARD: NOVEMBER 2, 1972.

1. THE RESPONDENT BY LETTER FROM ITS SOLICITORS DATED OCTOBER 30, 1972 HAS REQUESTED THE BOARD TO REVOKE ALL ITS DECISIONS IN THIS MATTER SUBSEQUENT TO JUNE 14, 1972.

2. THE RESPONDENT HAS NOT ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE WHICH WAS NOT AVAILABLE ON OR BEFORE JUNE 14, 1972, THE DATE OF THE FIRST HEARING IN THIS MATTER. EACH AND EVERY ISSUE RAISED BY THE RESPONDENT IN ITS LETTER OF OCTOBER 30, 1972 WERE CONSIDERED BY THE BOARD PRIOR TO ARRIVING AT ITS DECISION OF OCTOBER 10, 1972 AND INDEED MOST OF THE ISSUES WERE PREVIOUSLY DEALT WITH IN THE BOARD'S EARLIER DECISIONS. THE RESPONDENT'S MAIN COMPLAINT WOULD APPEAR TO BE THAT IT WAS DENIED THE OPPORTUNITY TO ADDUCE EVIDENCE IN REGARD TO THE BARGAINING UNIT AT THE BOARD'S HEARING OF JUNE 14, 1972. AS SET OUT IN THE BOARD'S DECISIONS IN THIS MATTER, IT IS NOTED THAT THE RESPONDENT FAILED TO SPECIFICALLY STATE THAT IT WISHED TO MAKE REPRESENTATIONS WITH RESPECT TO THE BARGAINING UNIT AT THE HEARING OF JUNE 14, 1972 AND EVEN IF THE RESPONDENT HAD THE RIGHT TO MAKE ADDITIONAL REPRESENTATIONS WITH RESPECT TO THE COMPOSITION OF THE BARGAINING UNIT AFTER THE EXAMINER'S PRE-HEARING VOTE MEETING, THE OTHER PARTIES HAD NO NOTICE OF THE RESPONDENT'S INTENTION TO DO SO PRIOR TO JUNE 14TH AND ACCORDINGLY WE WERE NOT PREPARED TO DEAL WITH THE MATTER AT THAT TIME.

3. HOWEVER THAT MAY BE, THE RESPONDENT WAS NOTIFIED BY LETTER DATED MARCH 24, 1972 THAT "THE FINAL DECISION OF THE BOARD AS TO THE APPROPRIATE BARGAINING UNIT WILL BE MADE IF NECESSARY TO DO SO FOLLOWING THE TAKING OF THE VOTE AND IN ARRIVING AT ITS DECISION ON THIS POINT, THE BOARD WILL TAKE INTO ACCOUNT THE REPRESENTATIONS OF THE PARTIES AS MADE TO THE EXAMINER..." WHEN THE RESPONDENT, FOR THE FIRST TIME, INDICATED THAT IT WISHED TO CALL NEW EVIDENCE WITH RESPECT TO THE APPROPRIATENESS OF THE BARGAINING UNIT AT THE HEARING OF JUNE 14TH THE BOARD INDICATED THAT IT WOULD NOT ENTERTAIN SUCH EVIDENCE AT THAT TIME BUT WOULD PRESERVE THE RESPONDENT'S RIGHTS WITH RESPECT TO SUCH EVIDENCE AND REPRESENTATIONS. WHEN THE BOARD INDICATED THAT IT WOULD PRESERVE THE RESPONDENT'S RIGHTS, IT DID NOT INDICATE THAT IT WOULD CREATE ANY RIGHTS FOR THE RESPONDENT TO MAKE ADDITIONAL REPRESENTATIONS ON THE BARGAINING UNIT. AT THE HEARING ON OCTOBER 4, 1972, THE RESPONDENT WAS INVITED TO CALL EVIDENCE WHICH WOULD ESTABLISH THAT IT HAD THE RIGHT TO REOPEN THE ISSUE CONCERNING THE DESCRIPTION AND COMPOSITION OF THE BARGAINING UNIT AND INDEED THE BOARD RECESSED AT THE REQUEST OF THE RESPONDENT TO PERMIT COUNSEL FOR THE RESPONDENT TO OBTAIN INSTRUCTIONS IN THIS REGARD. COUNSEL FOR THE RESPONDENT CLEARLY INDICATED THAT THE RESPONDENT DID NOT INTEND TO CALL ANY EVIDENCE AT THE HEARING ON OCTOBER 4TH AND RELIED SOLELY UPON THE EVIDENCE OF THE DE FACTO BUILD-UP. HAD THE RESPONDENT ESTABLISHED THAT NEW EVIDENCE WAS AVAILABLE THAT WAS NOT AVAILABLE AT THE EXAMINER'S MEETING OR SOME OTHER TYPE OF EVIDENCE WHICH WOULD ESTABLISH THAT IT OUGHT TO HAVE THE RIGHT TO REOPEN THE ISSUE CONCERNING THE DESCRIPTION AND COMPOSITION OF THE BARGAINING UNIT, THE RESPONDENT WOULD HAVE BEEN GIVEN THE OPPORTUNITY TO CALL SUCH ADDITIONAL BARGAINING UNIT EVIDENCE AT THE HEARING ON OCTOBER 4TH AND WAS GIVEN NOTICE OF THIS FACT IN THE NOTICE OF HEARING WHICH READS "TAKE NOTICE OF THE HEARING BY THE BOARD TO AFFORD THE RESPONDENT AN OPPORTUNITY TO ESTABLISH ITS RIGHT TO MAKE FURTHER REPRESENTATIONS ON THE COMPOSITION OF THE BARGAINING UNIT IN THIS MATTER AND ALL OUTSTANDING ISSUES".

4. AS STATED IN THE ADDRESSOGRAPH-MULTIGRAPH OF CANADA LIMITED CASE, OLRB MONTHLY REPORT, MARCH 1968, P. 1183, THE PARTIES ARE AFFORDED AN OPPORTUNITY TO CHANGE THE POSITIONS INITIALLY ADOPTED BY THEM IN THE APPLICATION OR REPLY. THE BOARD ALSO STATED THAT "... THE BOARD USUALLY APPOINTS AN EXAMINER TO MAKE THE NECESSARY INQUIRIES AND OBTAIN THE NECESSARY EVIDENCE TO PERMIT THE BOARD TO RESOLVE THE ISSUE IN DISPUTE BETWEEN THE PARTIES" WHERE THE PARTIES ARE UNABLE TO AGREE ON THE DESCRIPTION OF THE BARGAINING UNIT. THIS WAS DONE IN THE INSTANT CASE AND THE EXAMINER MET WITH THE PARTIES AT THE PRE-HEARING VOTE MEETING AND OBTAINED THE NECESSARY EVIDENCE TO PERMIT THE BOARD TO RESOLVE THE DISPUTE BETWEEN THE PARTIES ON THE DESCRIPTION AND COMPOSITION OF THE BARGAINING UNIT.

5. IN VIEW OF THE FACT THAT THE RESPONDENT HAD FULL OPPORTUNITY TO MAKE REPRESENTATIONS ON THE DESCRIPTION AND COMPOSITION OF THE BARGAINING UNIT AT THE EXAMINER'S MEETING AND INDEED TOOK ADVANTAGE OF THIS OPPORTUNITY, IT DID NOT THEREAFTER HAVE THE RIGHT TO MAKE ADDITIONAL REPRESENTATIONS SUBSEQUENT TO THE DATE OF THE EXAMINER'S MEETING. ACCORDINGLY,

THE RESPONDENT HAD NO RIGHT ON JUNE 14TH TO MAKE ADDITIONAL REPRESENTATIONS AND CERTAINLY NO RIGHT ON JUNE 14TH TO REPUDIATE THE REPRESENTATIONS WHICH THE RESPONDENT HAD ALREADY MADE AND ON WHICH THE BOARD ACTED WHEN IT DIRECTED THE VOTE BY ITS DECISION OF MARCH 24, 1972.

6. FOR THE ABOVE REASONS AND FOR THE REASONS ALREADY SET FORTH IN THE BOARD'S DECISIONS IN THIS MATTER, THE BOARD IS OF THE VIEW THAT IT SHOULD NOT VARY OR REVOKE ANY OF ITS DECISIONS IN THIS CASE. THE REQUEST OF THE RESPONDENT IS THEREFORE DENIED.

7. THE BOARD DIRECTS THAT THE REGISTRAR CAUSE THE BALLOTS CAST IN THE REPRESENTATION VOTE CONDUCTED ON AUGUST 29, 1972 TO BE COUNTED AND REPORT TO THE BOARD.

2341-72-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) v. DOUGLAS AIRCRAFT COMPANY OF CANADA LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: ERNEST ROVET AND W. CORNWALL FOR THE APPLICANT; D.F.O. HERSEY AND E. J. DURAND FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 2, 1972.

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3. THE APPLICANT SEEKS A DETERMINATION AS TO WHETHER GORDON McKEOWAN, HAROLD HILL AND PETER O'DELL, PERSONS CLASSIFIED BY THE RESPONDENT AS QUALITY ASSURANCE AUDITORS, ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

4. THE APPLICANT AND THE RESPONDENT ARE PARTIES TO A COLLECTIVE AGREEMENT WHICH IS EFFECTIVE FROM DECEMBER 1, 1971 TO SEPTEMBER 15, 1974. THE RELEVANT PORTIONS OF THE COLLECTIVE AGREEMENT READ AS FOLLOWS:

ARTICLE 1 - RECOGNITION

SECTION 1 - SCOPE AND RECOGNITION

- (B) IN THE EVENT THAT ANY DISPUTE ARISES BETWEEN THE COMPANY AND THE UNION WITH RESPECT TO THE EXCLUSION OF A NEW CLASSIFICATION FROM THE BARGAINING UNIT AS OUTLINED IN THIS ARTICLE, ALL SUCH DISPUTES SHALL BE RESOLVED THROUGH REFERRAL TO AN ARBITRATOR UNDER THE GRIEVANCE PROCEDURE. 104

IN RESOLVING ANY DISPUTE AS TO WHETHER 105
 A NEW CLASSIFICATION SHALL BE INCLUDED
 IN THE BARGAINING UNIT, THE ARBITRATOR
 SHALL DO SO BY COMPARING WITHIN THE
 MEANING OF SECTION 1(A) THE DUTIES AND
 RESPONSIBILITIES OF ALL PRESENTLY INCLUDED
 AND EXCLUDED CLASSIFICATIONS TO THOSE OF THE
 NEW CLASSIFICATION.

5. THE PARTIES AGREED THAT THE POSITION OF QUALITY ASSURANCE AUDITOR WAS A NEW CLASSIFICATION CREATED BY THE RESPONDENT DURING THE TERM OF OPERATION OF THE COLLECTIVE AGREEMENT IN THIS MATTER.

6. THE RESPONDENT ARGUED THAT THE PROCEDURE UNDER SECTION 95(2) IS REDUNDANT. THE REAL ISSUE BETWEEN THE PARTIES IS WHETHER THE DISPUTED PERSONS ARE EMPLOYEES OF THE RESPONDENT COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES. IT WAS THE RESPONDENT'S POSITION THAT THIS MATTER CAN BEST BE RESOLVED BY AN ARBITRATOR AND SINCE THE ARBITRATOR HAS THE NECESSARY JURISDICTION TO DETERMINE THIS ISSUE, AN APPLICATION UNDER SECTION 95(2) OF THE ACT WOULD SERVE NO USEFUL PURPOSE. THE RESPONDENT RELIED UPON THE DECISION IN RE CANADIAN INDUSTRIES LTD. AND INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF UNITED STATES AND CANADA, LOCAL 13328 CASE [1972] 3 O.R. 63.

7. THE RESPONDENT FURTHER ARGUED THAT THE PROVISIONS OF ARTICLE 1(1)(B) OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES SET OUT THE PROCEDURE WHICH THE PARTIES HAVE AGREED TO FOLLOW WHEN A NEW CLASSIFICATION IS CREATED AND ACCORDINGLY THE APPLICANT SHOULD NOT BE PERMITTED TO CHOOSE A DIFFERENT PROCEDURE THAN THAT TO WHICH IT HAS PREVIOUSLY AGREED.

8. HAVING CONSIDERED THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THE RESPONDENT'S OBJECTION TO THIS APPLICATION IS WELL-FOUNDED. WHILE A DECISION OF THE BOARD UNDER SECTION 95(2) OF THE LABOUR RELATIONS ACT MAY BE PRELIMINARY TO A FINAL DETERMINATION OF THE DISPUTE BETWEEN THE PARTIES PURSUANT TO THE GRIEVANCE AND ARBITRATION PROCEDURE OF A COLLECTIVE AGREEMENT, THE DECISION OF THE LABOUR RELATIONS BOARD IS NOT NECESSARILY DISPOSITIVE OF THE REAL ISSUE. APART FROM THE PROVISIONS OF ARTICLE 1(1)(B) OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES, AN APPLICATION MAY BE MADE UNDER SECTION 95(2) IN ANTICIPATION THAT THE BOARD'S DECISION WILL PERMIT THE PARTIES TO NEGOTIATE THEIR DIFFERENCES IN LIGHT OF THE BOARD'S DECISION. IF, HOWEVER, A PARTY TO A COLLECTIVE AGREEMENT WISHES TO PROCEED DIRECTLY TO ARBITRATION, IT HAS BEEN THE BOARD'S LONG-HELD OPINION THAT THE ARBITRATOR HAS THE NECESSARY AUTHORITY TO DETERMINE WHETHER A PERSON IS AN EMPLOYEE FOR THE PURPOSE OF THE COLLECTIVE AGREEMENT. THE BOARD'S JURISDICTION UNDER SECTION 95(2) OF THE ACT ONLY PERMITS THE BOARD TO DETERMINE WHETHER A PERSON IS AN EMPLOYEE FOR THE PURPOSES OF THE LABOUR RELATIONS ACT. IT MAY WELL BE THAT SUCH A DECISION WILL PERMIT THE PARTIES TO RESOLVE THEIR DISPUTE. HOWEVER, EVEN IF THE BOARD WERE TO FIND THAT A PERSON IS AN EMPLOYEE FOR THE PURPOSES OF THE ACT, SUCH A FINDING DOES NOT NECESSARILY

MEAN THAT THE PERSON IS AUTOMATICALLY COVERED BY THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES. AN EMPLOYEE FOR THE PURPOSES OF THE ACT MAY BE EXCLUDED FROM THE BARGAINING UNIT COVERED BY THE COLLECTIVE AGREEMENT BY REASON OF THE FACT THAT THE PERSON DOES NOT SHARE A COMMUNITY OF INTEREST WITH BARGAINING UNIT EMPLOYEES. IN THIS REGARD, SEE INTERNATIONAL ASSOCIATION OF MACHINISTS AND MORSE CHAIN OF CANADA LIMITED CASE 62 CLLC ¶16,225; CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 157 AND CITY OF ST. CATHARINES CASE, OLRB MONTHLY REPORT, JULY 1966, P. 270; LOCAL 4509, UNITED STEELWORKERS OF AMERICA AND ALGOMA STEEL CORPORATION LIMITED CASE, OLRB MONTHLY REPORT, DECEMBER 1966, P. 722, AND THE CANADIAN UNION OF PUBLIC EMPLOYEES - CLC, ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000 AND THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE, OLRB MONTHLY REPORT, AUGUST 1969, P. 669.

9. AN ARBITRATOR MAY HAVE CONCURRENT JURISDICTION, TO A LIMITED DEGREE, WITH THE LABOUR RELATIONS BOARD WHEN A DISPUTE OF THIS NATURE ARISES. AN ARBITRATOR MAY DETERMINE THAT AN EMPLOYEE IS INCLUDED IN THE BARGAINING UNIT REPRESENTED BY THE UNION AND IT MAY BE INHERENT IN SUCH A DECISION THAT THE PERSON IS AN EMPLOYEE FOR THE PURPOSES OF THE ACT, BUT SUCH IS NOT NECESSARILY THE CASE. AGAIN, AS SET OUT ABOVE, THE LABOUR RELATIONS BOARD'S DECISION THAT A PERSON IS AN EMPLOYEE FOR THE PURPOSES OF THE ACT MAY RESULT IN THE PARTIES BEING ABLE TO DETERMINE THAT HE IS ALSO AN EMPLOYEE COVERED BY THE PROVISIONS OF THE COLLECTIVE AGREEMENT, BUT AGAIN THIS IS NOT NECESSARILY SO. APART FROM THE PROVISIONS OF ARTICLE 1(1)(B) OF THE COLLECTIVE AGREEMENT IN THIS MATTER, THE APPLICANT WOULD BE ENTITLED TO ELECT WHICH REMEDY TO CHOOSE. THE APPLICANT MIGHT HAVE ELECTED TO PROCESS BY WAY OF THE GRIEVANCE AND ARBITRATION PROCEDURE OR BY WAY OF AN APPLICATION UNDER SECTION 95(2) SINCE THE LATTER TYPE OF APPLICATION MAY BE LESS COSTLY. HOWEVER, IF, AS IN THIS CASE, THE APPLICANT IS A TRADE UNION, THE PROCEDURE UNDER 95(2) OF THE ACT MAY ALSO REQUIRE THE DECISION BY AN ARBITRATOR IF THE APPLICANT IS SUCCESSFUL BEFORE THE LABOUR RELATIONS BOARD. USUALLY, HOWEVER, IF THE APPLICANT UNION IS UNSUCCESSFUL BEFORE THE BOARD AND THE BOARD DETERMINES THAT THE DISPUTED PERSON IS NOT AN EMPLOYEE FOR THE PURPOSES OF THE ACT, THAT WOULD BE THE END OF THE MATTER.

10. IN THIS CASE, HOWEVER, THE BOARD MUST ASCERTAIN WHAT EFFECT, IF ANY, THE PROVISIONS OF ARTICLE 1(1)(B) OF THE COLLECTIVE AGREEMENT OUGHT TO HAVE ON AN APPLICATION UNDER SECTION 95(2). ARTICLE 1(1)(B) CLEARLY SETS OUT THE AGREEMENT OF THE PARTIES TO PROCEED BY WAY OF THE GRIEVANCE AND ARBITRATION PROCEDURE IF A NEW CLASSIFICATION IS CREATED. IT ALSO SETS OUT THE CRITERIA WHICH THE ARBITRATOR SHALL FOLLOW IN MAKING A DETERMINATION OF THE ISSUE. THESE CRITERIA ARE NOT THE SAME CRITERIA THAT THE BOARD WOULD ADOPT IN MAKING ITS DETERMINATION UNDER SECTION 95(2) AND ACCORDINGLY ANY DETERMINATION THE BOARD MIGHT MAKE UNDER SECTION 95(2) MAY WELL BE MERELY ACADEMIC. IT HAS BEEN THE BOARD'S REGULAR PRACTICE TO REFUSE TO TAKE ANY STEPS WHICH WOULD ASSIST A PARTY IN ITS ATTEMPT TO UNILATERALLY REPUDIATE AN AGREEMENT WHICH HAS BEEN FREELY ENTERED INTO. FOR THAT REASON ALONE, THE BOARD IS OF THE VIEW THAT IT SHOULD NOT ENTERTAIN THE INSTANT APPLICATION. THE PARTIES IN THIS MATTER

HAVE AGREED THAT DISPUTES INVOLVING NEW CLASSIFICATIONS SHOULD BE FINALLY RESOLVED BY AN ARBITRATOR. IT IS THE CLEAR INTENT OF THE PARTIES THAT THE ARBITRATOR WOULD BE EMPOWERED TO DETERMINE WHETHER THE NEW CLASSIFICATION SHOULD BE INCLUDED OR EXCLUDED FROM THE BARGAINING UNIT AND THERE ARE NO LIMITATIONS PLACED ON THE ARBITRATOR IN MAKING SUCH A DETERMINATION. IT MAY WELL BE THAT THE ISSUE WHETHER A NEW CLASSIFICATION IS INCLUDED IN THE BARGAINING UNIT INVOLVES A DETERMINATION OF WHETHER THE PERSON OCCUPYING THE NEW CLASSIFICATION EXERCISES MANAGERIAL FUNCTIONS. IT IS CLEAR FROM THE DECISION IN THE CANADIAN INDUSTRIES LTD. CASE REFERRED TO ABOVE AS WELL AS FROM THE WORDING OF ARTICLE 1(1)(B) OF THE COLLECTIVE AGREEMENT THAT THE ARBITRATOR HAS AUTHORITY TO MAKE THIS DETERMINATION.

11. FOR THE ABOVE REASONS, AND FOR REASONS SIMILAR TO THOSE EXPRESSED BY THE BOARD IN THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND NATIONAL SHOWCASE CO. LTD. CASE 61 CLLC 916,185, THE BOARD IS OF THE VIEW THAT WHERE THE PARTIES HAVE EXPRESSLY PROVIDED, AS IN THIS CASE, THAT A DISPUTE INVOLVING THE CREATION OF A NEW CLASSIFICATION SHOULD BE RESOLVED BY MEANS OF THE GRIEVANCE AND ARBITRATION PROCEDURE OF THE COLLECTIVE AGREEMENT, THE BOARD SHOULD NOT ENTERTAIN AN APPLICATION UNDER SECTION 95(2) OF THE ACT SINCE THE PARTIES HAVE AGREED TO THE PROCEDURE TO BE FOLLOWED. SINCE THE APPLICANT IN THIS CASE HAS NOT IMPLEMENTED THE AGREED PROCEDURE, IT SHOULD NOT BE PERMITTED TO UNILATERALLY REPUDIATE ITS AGREEMENT AS CONTAINED IN ARTICLE 1(1)(B) OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES.

12. THIS APPLICATION IS THEREFORE DISMISSED.

2631-72-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) V. CAPITAL COACH LINES COMPANY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: DON NICHOLSON AND RICK BECKWITH FOR THE APPLICANT; R. D. PERKINS, J. CHARLEBOIS AND B. O'CONNOR FOR THE RESPONDENT.

DECISION OF THE BOARD:

NOVEMBER 6, 1972.

1. THE NAME "CAPITAL COACH LINES CO. LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "CAPITAL COACH LINES COMPANY LIMITED".

2. THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN DRIVING SCHOOL BUSES, WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

3. THE BOARD FINDS, ON THE EVIDENCE BEFORE IT, THAT THE RESPONDENT OPERATES AN INTEGRATED BUS OPERATION AND THAT THE EMPLOYEES THE APPLICANT

SEEKS TO REPRESENT SHARE A COMMUNITY OF INTEREST WITH OTHER BUS DRIVERS OF THE RESPONDENT. MANY OF THE SCHOOL BUS DRIVERS ALSO REGULARLY OPERATE BUSES IN THE RESPONDENT'S CHARTER OPERATION OUTSIDE THE PROVINCIAL BOUNDARIES OF ONTARIO. IN VIEW OF THE INTEGRATED NATURE OF THE RESPONDENT'S BUS OPERATION, THE BOARD FINDS, FOR THE REASONS GIVEN IN THE WILSON'S TRUCK LINES LIMITED CASE, OLRB MONTHLY REPORTS, MAY 1970, P. 204, AND THE RE TANK TRUCK TRANSPORT LTD. CASE, 25 D.L.R. (2d) 161 AFFIRMED ON APPEAL BY THE ONTARIO COURT OF APPEAL 36 D.L.R. (2d) 636, THAT THE BUSINESS OF THE RESPONDENT IS AN UNDERTAKING WITHIN THE MEANING OF THE EXCEPTION IN SECTION 92(10)(A) OF THE BRITISH NORTH AMERICA ACT, 1867 AND THAT ITS LABOUR RELATIONS THEREFORE FALL ENTIRELY OUTSIDE THE JURISDICTION OF THE ONTARIO LABOUR RELATIONS BOARD.

4. THIS APPLICATION IS THEREFORE TERMINATED.

2193-72-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. RAY PLASTICS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: ROSS RUSSELL AND GEORGE A. STEVENS FOR THE APPLICANT; J. PERRY BORDEN AND MURRAY SPENCER FOR THE RESPONDENT; NO ONE APPEARING FOR THE OBJECTORS.

DECISION OF THE BOARD AND BOARD MEMBER J. E. C. ROBINSON, Q.C. CONCURRING IN PART: NOVEMBER 8, 1972.

1. PURSUANT TO THE DECISION OF THE BOARD DATED AUGUST 16, 1972, A REPRESENTATION VOTE WAS CONDUCTED IN THIS MATTER. THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE SAID VOTE WAS SEALED PENDING A RULING BY THE BOARD CONCERNING AN ALLEGATION THAT NANCY LOISELLE HAD NOT PAID THE SUM OF \$1.00 AS INITIATION FEE FOR MEMBERSHIP IN THE APPLICANT AS APPEARS ON THE FACT OF THE MEMBERSHIP CARD FILED BY THE APPLICANT. CORINA NOVIELLI IS THE PERSON SHOWN ON THE SAID CARD AS THE COLLECTOR.

2. IN ACCORDANCE WITH ITS NORMAL PROCEDURE IN THESE CIRCUMSTANCES, BOTH OF THESE INDIVIDUALS WERE SUBPOENAED BY THE BOARD AND FOLLOWING THE BOARD'S OWN EXAMINATION OF THEM, THEY WERE, IN TURN, CROSS-EXAMINED BY THE APPLICANT AND THE RESPONDENT.

3. THE FACTS GIVING RISE TO THIS ALLEGATION, WE FIND ARE AS FOLLOWS: ON THE MORNING OF JUNE 27, 1972, MISS LOISELLE, DURING HER WORK BREAK MET MRS. NOVIELLI JUST BEYOND THE PLANT PREMISES AS PRE-ARRANGED, WHERE SHE PROCEEDED TO RETURN CERTAIN MEMBERSHIP CARDS ENTRUSTED TO HER BY MRS. NOVIELLI. DURING THE COURSE OF THIS EXCHANGE, IT BECAME APPARENT THAT MISS LOISELLE HERSELF HAD NOT SIGNED A CARD. WHEN QUERIED ON THIS MATTER, MISS LOISELLE REPLIED THAT SHE HAD NO MONEY, WHEREUPON MRS. NOVIE-

LLI AGREED TO PAY THE DOLLAR FOR HER. ALTHOUGH MRS. NOVIELLI HAD SOME VAGUE APPREHENSION THAT SHE WOULD BE REPAID, NO ARRANGEMENTS FOR REPAYMENT WERE MADE AT THIS TIME. IT NOW TRANSPIRES THAT MISS LOISELLE HAD A CHANGE OF HEART IN JOINING THE APPLICANT AND CONSEQUENTLY NEVER DID IN FACT REIMBURSE MRS. NOVIELLI. ALTHOUGH IT IS OBVIOUS THAT MISS LOISELLE'S MEMBERSHIP CARD MUST BE DISCOUNTED, THE ISSUE ARISES AS TO WHETHER THE BOARD CAN NEVERTHELESS RELY UPON THE REMAINING EVIDENCE OF MEMBERSHIP PRESENTLY BEFORE US, SUCH THAT THE REGISTRAR CAN NOW BE INSTRUCTED TO PROCEED WITH THE COUNTING OF THE BALLOTS CAST IN THE REPRESENTATION VOTE.

4. IN THIS CONNECTION, WE FIND THE FOLLOWING FACTS WHICH WERE MAINLY ADDUCED UPON CROSS-EXAMINATION TO BE MATERIAL: THE APPLICANT BEGAN ITS ORGANIZATIONAL CAMPAIGN OF THE RESPONDENT'S EMPLOYEES UPON THE EXPRESS INVITATION OF MRS. NOVIELLI. FOLLOWING A MEETING WITH THE APPLICANT'S REPRESENTATIVE, MR. STEPHENS, SHE WAS GIVEN THE MEMBERSHIP CARDS AND CHARGED WITH THE RESPONSIBILITY FOR SIGNING UP THE EMPLOYEES ON JUNE 22, 1972. MRS. NOVIELLI, IN TURN, TURNED OVER SOME OF THESE CARDS TO MISS LOISELLE FOR EXECUTION. ALTHOUGH MISS LOISELLE'S NAME APPEARS ON TWO OF THE CARDS AS COLLECTOR, SHE COLLECTED MONEY FROM FOUR OTHER EMPLOYEES BUT FAILED TO SIGN THE RECEIPT PORTIONS OF THEIR MEMBERSHIP CARDS. THESE UNCOMPLETED CARDS WERE AMONG THOSE INCLUDED IN THE MEMBERSHIP CARDS GIVEN TO MRS. NOVIELLI BY MISS LOISELLE AT THEIR JUNE 27 MEETING AS INDICATED IN PARAGRAPH #3 HEREIN. THESE DISCREPANCIES WERE NOTED BY MR. STEPHENS WHEN THE CARDS WERE RETURNED TO HIM BY MRS. NOVIELLI. MR. STEPHENS THEN PERSONALLY ATTENDED THE HOMES OF THE FOUR SIGNATORIES WHEREUPON SATISFYING HIMSELF THAT THEY HAD PREVIOUSLY EACH PAID A DOLLAR OVER TO MISS LOISELLE, SIGNED THE RECEIPT PORTION OF EACH OF THE FOUR CARDS AS COLLECTOR. IN OTHER WORDS, CONTRARY TO WHAT IS SHOWN ON THE FACT OF THESE CARDS, MR. STEPHENS WAS NOT THE COLLECTOR AND DID NOT IN FACT RECEIVE THE DOLLAR PAID BY THESE SIGNATORIES. THIS MATTER WAS NOT DISCLOSED TO THE BOARD AND ONLY CAME TO LIGHT DURING THE COURSE OF THIS HEARING.

5. AS REGARDS THE REMAINING EVIDENCE OF MEMBERSHIP, APPROXIMATELY HALF OF THE MEMBERSHIP CARDS SHOW MRS. NOVIELLI AS COLLECTOR. UPON CROSS-EXAMINATION, MRS. NOVIELLI DENIED THAT MR. STEPHENS HAD EVER INSTRUCTED HER CONCERNING THE PROPRIETY OF PROVIDING LOANS TO THE SIGNATORIES ON THE MEMBERSHIP CARDS AND IN ADDITION TO THE "LOAN" TO MISS LOISELLE, SHE TESTIFIED THAT SHE LENT A DOLLAR TO ANOTHER EMPLOYEE IN THIS REGARD WHICH WAS PAID BACK TO HER THE NEXT DAY. SHE FURTHER TESTIFIED THAT SHE INFORMED MR. STEPHENS OF MISS LOISELLE'S FAILURE TO PAY AT THE TIME OF RETURNING THE CARDS TO HIM ON JUNE 27, 1972. MR. STEPHENS, ON THE OTHER HAND, MAINTAINS THAT HE PROPERLY INSTRUCTED HER IN THE PERFORMANCE OF HER COLLECTOR DUTIES AND CATEGORICALLY DENIES BEING ADVISED BY MRS. NOVIELLI AT THE RELEVANT TIME OF MISS LOISELLE'S FAILURE TO PAY.

6. HAVING HAD THE OPPORTUNITY TO ASSESS THE CREDIBILITY OF THESE WITNESSES BASED ON THEIR Demeanour IN THE WITNESS BOX AND THE MANNER IN WHICH THEY GAVE THEIR EVIDENCE AND HAVING ASSESSED THE REASONABLENESS OF THEIR TESTIMONY, WE PREFER THE EVIDENCE OF MR. STEPHENS IN THIS REGARD.

NEVERTHELESS, WE ARE SATISFIED THAT MRS. NOVIELLI WAS CONFUSED AS TO THE EXTEND OF HER DUTIES AS A COLLECTOR HAVING REGARD TO THE HAPHAZARD MANNER IN WHICH SHE CARRIED OUT THESE ACTIVITIES. IN THIS REGARD MISS LOISELLE TESTIFIED THAT SHE COLLECTED THE MONEY FOR THE FOUR CARDS REFERRED TO IN PARAGRAPH #4 "ON BEHALF OF MRS. NOVIELLI" AND IT WOULD APPEAR THAT THIS IS THE REASON THAT SHE DID NOT SIGN AS COLLECTOR. AS ALREADY INDICATED, MRS. NOVIELLI PERSONALLY PROVIDED LOANS TO SIGNATORIES ON AT LEAST TWO OCCASIONS. FURTHER SHE TESTIFIED THAT BOTH SHE AND MISS LOISELLE USED THE SAME PEN TO SIGN THE LATTER'S CARD. IN OUR OPINION, IT WOULD APPEAR THAT TWO DIFFERENT PENS WERE USED AS HER WRITING PAPERS DARKER THAN THAT OF MISS LOISELLE'S WHICH CANNOT BE EXPLAINED AWAY ON THE BASIS OF DIFFERENT WRITING PRESSURES. HAVING REGARD TO THESE CIRCUMSTANCES WE ARE NOT PREPARED TO ACCEPT ANY OF THE EVIDENCE OF MEMBERSHIP IN WHICH MRS. NOVIELLI IS SHOWN AS THE COLLECTOR. AS THIS WOULD EFFECTIVELY REDUCE THE APPLICANT'S MEMBERSHIP POSITION TO BELOW THE 35 PER CENT LEVEL REQUIRED FOR THE TAKING OF A REPRESENTATION VOTE, IT IS NOT NECESSARY FOR THE BOARD TO DEAL WITH ANY OTHER OUTSTANDING ISSUES IN ORDER TO DISPOSE OF THIS APPLICATION.

7. IN THE RESULT THEREFORE, THE BOARD IS NOT SATISFIED THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE. THE APPLICATION IS THEREFORE DISMISSED.

. . .

DECISION OF BOARD MEMBER J. E. C. ROBINSON, Q.C.: NOVEMBER 8, 1972.

I AGREE ONLY WITH THE FINDING OF MY COLLEAGUES THAT I AM NOT PREPARED TO RELY UPON ANY OF THE EVIDENCE OF MEMBERSHIP IN WHICH MRS. NOVIELLI IS SHOWN AS COLLECTOR. I DO THIS ON THE BASIS OF THE UNDISPUTED TESTIMONY OF "NON-PAY" BY MISS LOISELLE, TOGETHER WITH THE FACT THAT MRS. NOVIELLI SIGNED AS COLLECTOR ON MISS LOISELLE'S CARD. HOWEVER, I WOULD ALSO FIND THAT BECAUSE OF THE CONNECTION OF MRS. NOVIELLI AS COLLECTOR IN THE FOUR MEMBERSHIP CARDS REFERRED TO IN PARAGRAPH #4 OF THE MAJORITY DECISION, THAT SUCH EVIDENCE OF MEMBERSHIP SHOULD ALSO BE DISCOUNTED. THERE IS HOWEVER, ANOTHER MATTER ON WHICH THE MAJORITY, FOR REASONS UNKNOWN TO ME, HAVE DECLINED TO EITHER DISCUSS OR MAKE A FINDING. THE MATTER WHICH I PROPOSE TO DISCUSS CONCERNS THE PROPRIETY OF THE FORM 8 FILED WITH THIS APPLICATION. THE BOARD INITIALLY SCHEDULED A HEARING TO INVESTIGATE A SUGGESTION OF "NON-PAY" ON THE PART OF MISS LOISELLE, WHICH SUGGESTION WAS WELL FOUNDED, AND THE BOARD HAS DETERMINED THAT INDEED NO PAYMENT WAS MADE BY MISS LOISELLE AS REQUIRED BY THE LABOUR RELATIONS ACT. DURING THE COURSE OF THIS HEARING THE UNDISPUTED EVIDENCE DISCLOSED THAT IN ADDITION TO THE NON-PAY INVESTIGATED, THERE WAS ONE ADDITIONAL NON-PAY WHERE A LOAN WAS MADE BY THE COLLECTOR WHICH WAS SUBSEQUENTLY REPAID, AS WELL AS FOUR CARDS WHICH WERE SUBMITTED AS EVIDENCE OF MEMBERSHIP WHEREIN MR. STEPHENS, AN EXPERIENCED ORGANIZER OF THE APPLICANT UNION (AND THE MAN PRIMARILY RESPONSIBLE FOR THE CONDUCT OF THIS ORGANIZATION CAMPAIGN) SIGNED AS "COLLECTOR" ON THE FOUR CARDS,

ALTHOUGH HE ADMITTED IN THE WITNESS BOX THAT HE HAD COLLECTED NO MONEY FROM THE EMPLOYEES ON THE PURPORTED MEMBERSHIP CARDS.

FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, WAS TAKEN BY THE DIRECTOR OF ORGANIZATION OF THE APPLICANT UNION.

PARAGRAPH 3 OF FORM 8 READS AS FOLLOWS:-

"...ON THE BASIS OF MY PERSONAL KNOWLEDGE AND INQUIRIES THAT I HAVE MADE, I STATE THAT THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS OR OTHER ACKNOWLEDGMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES ARE THE PERSONS WHO ACTUALLY COLLECTED THE MONEYS PAID ON ACCOUNT OF DUES OR INITIATION FEES AND THAT EACH MEMBER, ON WHOSE BEHALF A RECEIPT OR AN ACKNOWLEDGMENT OF PAYMENT IS SUBMITTED HAS PERSONALLY PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT OR ACKNOWLEDGMENT OF PAYMENT AS COLLECTOR, EXCEPT IN THE FOLLOWING INSTANCES:"

THERE WERE NO EXCEPTIONS LISTED BY THE DECLARANT.

AFTER THE EVIDENCE GIVEN BY THE UNION ORGANIZER, MR. STEPHENS, THAT HE HAD NOT ACTED AS "COLLECTOR" ON THE FOUR CARDS WHEREON HE WAS LISTED AS COLLECTOR, THE CHAIRMAN OF THE PANEL, SPECIFICALLY ASKED THE DIRECTOR OF ORGANIZATION OF THE APPLICANT UNION IF HE HAD ANY COMMENTS IN VIEW OF THE PROVISIONS IN PARAGRAPH 3 OF FORM 8, MAKING BOTH POINTED AND SPECIFIC REFERENCE TO THE WORDS, "I STATE THAT THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS OR OTHER ACKNOWLEDGMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES ARE THE PERSONS WHO ACTUALLY COLLECTED THE MONEYS PAID ON ACCOUNT OF DUES OR INITIATION FEES AND THAT EACH MEMBER ON WHOSE BEHALF A RECEIPT OR AN ACKNOWLEDGMENT OF PAYMENT IS SUBMITTED HAS PERSONALLY PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT OR ACKNOWLEDGMENT OF PAYMENT AS COLLECTOR."

THE DIRECTOR OF ORGANIZATION TOOK THE POSITION THAT THE BOARD WOULD BE EXTREMELY TECHNICAL IF IT GAVE COGNIZANCE TO THE INACCURACY IN THE FORM 8. HE NEITHER CALLED, NOR OFFERED TO CALL ANY EVIDENCE IN DEFENCE OF THE INACCURATE AND MISLEADING STATEMENTS ON THE FORM 8.

INDEED WHEN IT WAS SUGGESTED BY A BOARD MEMBER THAT IT WOULD HAVE BEEN MORE PRUDENT IF HE HAD RECITED THE EVENTS SURROUNDING THE FOUR CARDS IN ISSUE, IN THE SPACE FOLLOWING THE 3RD PARAGRAPH IN FORM 8, HE REPLIED TO THE EFFECT THAT HE HAD NOT THOUGHT OF IT. THE LATTER REMARK COULD SUGGEST THAT THE DECLARANT HAD KNOWLEDGE OF THE SITUATION

SURROUNDING THE FOUR CARDS BUT DECLINED TO DISCLOSE THE CIRCUMSTANCES ON THE FORM 8. BE THAT AS IT MAY IT IS CLEAR THAT IF THE UNION OFFICER AND DECLARANT HAD MADE INQUIRIES OF MR. STEPHENS THE PAID UNION ORGANIZER, HE WOULD HAVE BEEN TOLD THE CIRCUMSTANCES AND IT WOULD HAVE BEEN OBLIGATORY UPON HIM TO MAKE FULL DISCLOSURE ON THE FORM 8. FAILURE TO DO SO MUST RESULT IN THE DISMISSAL OF THE APPLICATION FOR THAT REASON. ON THE OTHER HAND, FAILURE OF THE DECLARANT TO MAKE THE NECESSARY INQUIRIES WOULD ALSO RESULT IN THE BOARD DISMISSING THE APPLICATION FOR THAT REASON. (SEE NATIONAL STEEL CAR CORPORATION LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1966, P. 738; AND THE STANLEY STEEL COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY, 1972). ACCORDINGLY, IT FOLLOWS THAT EITHER WAY, THE FORM 8 IS MISLEADING INACCURATE AND UNTRUTHFUL AND THE APPLICATION MUST BE DISMISSED FOR THAT REASON. IT DEFIES MY LOGIC THAT BOTH OF MY COLLEAGUES WOULD SEEM TO FIND IT MORE PRUDENT TO COMPLETELY IGNORE THE RAMIFICATIONS OF THE DEFECTIVE FORM 8. THE JURISPRUDENCE CONCERNED WITH THE NECESSITY FOR FULL DISCLOSURE HAD, I THOUGHT, BEEN WELL SETTLED BY MANY DECISIONS OF THIS BOARD.

IN COLLINGWOOD SHIPYARDS CASE, O.L.R.B. MONTHLY REPORT JUNE 1967, PAGE 246 AT PAGE 250, THE BOARD STATED AS FOLLOWS:

"THE PRINCIPLES RELATING TO THE QUESTION OF DISCLOSURE AND THE REASONS WHY THE BOARD REQUIRES FULL DISCLOSURE HAVE BEEN SPELLED OUT IN MANY OF OUR DECISIONS. THE WEBSTER AIR EQUIPMENT CASE (SUPRA) IS PERHAPS THE LEADING CASE ON THE SUBJECT. IN THAT DECISION THE BOARD HAD THIS TO SAY AT PAGE 1717 (C.L.L.C.):

IT IS OBVIOUSLY A PRACTICAL IMPOSSIBILITY FOR THE BOARD TO INTERVIEW EACH EMPLOYEE ON WHOSE BEHALF DOCUMENTARY EVIDENCE OF MEMBERSHIP IS FILED IN A CERTIFICATION PROCEEDING, IN ORDER TO ASCERTAIN WHETHER HE HAS PERSONALLY SIGNED THE APPLICATION FOR MEMBERSHIP AND WHETHER HE HAS PAID ON HIS OWN BEHALF THE DUES OR FEES WHICH THE RECEIPT ACCOMPANYING THE APPLICATION PURPORTS TO ACKNOWLEDGE. IN ADDITION TO COMPARING THE SIGNATURE ON THE DOCUMENTARY EVIDENCE OF MEMBERSHIP FILED BY THE UNION WITH FACSIMILE SIGNATURES FILED BY THE EMPLOYER, THE BOARD SEEKS FROM THE REPRESENTATIVE OF THE UNION WHO APPEARS AT THE HEARING ASSURANCES THAT THE PAYMENT OF DUES HAS CONFORMED TO THE BOARD'S POLICY IN THAT REGARD, AND IT REQUIRES SUCH ASSURANCES TO BE BASED ON PERSONAL KNOWLEDGE OF THE FACTS OR ON INQUIRIES FROM THE PERSONS WHO THEMSELVES COLLECTED MONEY. IN THE NORMAL COURSE, THE BOARD ACCEPTS SUCH REPRESENTATIONS AT THEIR FACE VALUE. HOWEVER, SINCE THE BOARD IS COMPELLED TO RELY TO SUCH AN EXTENT ON EVIDENCE WHICH, BY THE VERY NATURE OF THINGS, IS NOT SUBJECT TO EXAMINATION BY THE PARTIES TO

THE PROCEEDINGS (SEE SECTION 72(1) [NOW 83(1)] OF THE LABOUR RELATIONS ACT), IT MUST BE VERY CIRCUMSPECT IN ACCEPTING IT AND IT MUST INSIST ON THE HIGHEST STANDARDS OF INTEGRITY ON THE PART OF THOSE WHO SUBMIT SUCH EVIDENCE. ANY ATTEMPT TO MISLEAD THE BOARD OR ANY FAILURE TO MAKE FULL DISCLOSURE OF ALL MATERIAL FACTS MUST WEIGH HEAVILY AGAINST AN APPLICANT. IN DEALING WITH THIS SITUATION, THE BOARD HAS MADE A DISTINCTION BETWEEN TWO TYPES OF CASES: (1) WHERE THE ACTION IMPUGNED IS THAT OF A RESPONSIBLE OFFICER OR OFFICIAL OF A UNION, AND (11) WHERE THE ACTION IS THAT OF A SUPPORTER OR CANVASSER ON BEHALF OF AN APPLICANT WHO OCCUPIES AN INFERIOR OFFICE OR NO OFFICE IN THE UNION. IN-
 SO FAR AS THE FIRST OF THESE IS CONCERNED, THE BOARD SAID IN THE RCA VICTOR COMPANY CASE, (1953) CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER, ¶17,067, C.L.C. 76-412, THAT, EVEN WHERE ONLY A SINGLE CARD IS DEFECTIVE AND IT IS SUBMITTED WITH THE KNOWLEDGE OF SUCH RESPONSIBLE OFFICER OR OFFICIAL, "THE BOARD MAY COME TO THE CONCLUSION THAT IT CANNOT PLACE RELIANCE ON ANY OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE UNION". WHERE THE IRREGULARITY RELATES TO EVIDENCE OF MEMBERSHIP PROCURED BY A PERSON OF LESSER RANK IN THE UNION ORGANIZATION, THE BOARD HAS TAKEN THE POSITION THAT THE CARD IN RESPECT OF WHICH THE IRREGULARITY IS ESTABLISHED IS DISALLOWED AND THE WEIGHT TO BE GIVEN TO THE REMAINING EVIDENCE OF MEMBERSHIP WILL DEPEND ON THE NATURE OF THE IRREGULARITY AND THE EXTENT TO WHICH THE OBJECTIONABLE PRACTICE WAS RESORTED TO IN THE SIGNING UP OF MEMBERS.

12. THIS CASE WAS DECIDED AT A TIME WHEN THE ASSURANCES REFERRED TO IN THE PASSAGE QUOTED WERE ORAL ASSURANCES GIVEN THE BOARD AT THE HEARING BY THE APPLICANT'S REPRESENTATIVE. THIS PRACTICE WAS REPLACED IN 1960 BY THE REQUIRED FILING OF FORM 9 BY THE APPLICANT WHICH, IN 1966, WAS IN TURN REPLACED BY FORM 8.

13. THE REQUIREMENT OF WRITTEN ASSURANCES HAS SERVED TO EMPHASIZE THE CONCERN OF THE BOARD FOR FULL DISCLOSURE AND DECISIONS SINCE THE INTRODUCTION OF THE FORMS REFLECT THIS CONCERN. THUS, IN VALLEY TRANSPORTATION COMPANY LIMITED, O.L.R.B. MONTHLY REPORT, NOVEMBER 1963, P. 448, THE BOARD SAID AT P. 451:

IT NEED HARDLY BE POINTED OUT, THAT IT WOULD BE IMPOSSIBLE FOR THE BOARD TO INTERVIEW EACH AND

EVERY EMPLOYEE IN RESPECT OF WHOM EVIDENCE OF MEMBERSHIP IS FILED IN APPLICATIONS FOR CERTIFICATION. FURTHER, WHETHER A PERSON IS OR IS NOT A MEMBER OF A TRADE UNION OR DOES OR DOES NOT DESIRE TO BE REPRESENTED BY A TRADE UNION ARE, EXCEPT IN THE SPECIAL CIRCUMSTANCES WHERE THE BOARD CONSENTS TO THEIR DISCLOSURE, MATTERS WHICH ARE PROTECTED FROM DISCLOSURE BY THE PROVISIONS OF SECTION 83 OF THE ACT. BY THE VERY NATURE OF THINGS, THEREFORE, THE BOARD MUST RELY HEAVILY AND ALMOST ENTIRELY ON DOCUMENTARY EVIDENCE WHEN CONSIDERING THE FACTS RELIED ON AS CONSTITUTING PROOF OF THE UNION'S MEMBERSHIP. AS THE DOCUMENTS SUBMITTED AS EVIDENCE OF MEMBERSHIP ARE NOT SUBJECT TO ANY EXAMINATION BY THE OTHER PARTIES TO THE PROCEEDINGS, THE BOARD MUST BE MOST CIRCUMSPECT AND METICULOUS IN ITS EXAMINATION AND ACCEPTANCE OF THEM. THE BOARD MUST EXPECT AND INSIST THAT PERSONS WHO FILE APPLICATIONS FOR MEMBERSHIP CARDS AND RECEIPTS AND FORM 9 AS EVIDENCE OF MEMBERSHIP, TAKE ALL NECESSARY PRECAUTIONS AND CARE TO ENSURE THAT THE INFORMATION CONTAINED THEREIN IS TRUE AND ACCURATE. THE BOARD IS ENTITLED TO DEMAND THE HIGHEST STANDARDS OF INTEGRITY, DISCLOSURE, AND ACCURACY ON THE PART OF THOSE WHO SUBMIT SUCH EVIDENCE AND WHERE UNDISCLOSED INACCURACIES OF MATERIAL FACTS ARE LATER BROUGHT TO ITS ATTENTION, TO TAKE A STRICT VIEW OF THEM. AS WAS SAID BY THE BOARD IN THE WEBSTER AIR EQUIPMENT COMPANY LTD. CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-59 ¶16,110, AT P. 12,204.

ANY ATTEMPT TO MISLEAD THE BOARD OR ANY FAILURE TO MAKE FULL DISCLOSURE OF ALL MATERIAL FACTS MUST WEIGH HEAVILY AGAINST AN APPLICANT.

AGAIN, IN HOLLAND RIVER GARDENS COMPANY LIMITED, O.L.R.B. MONTHLY REPORT, OCTOBER 1963, P. 364, WE FIND THIS PASSAGE AT P. 366:

IT IS OBVIOUSLY A PRACTICAL IMPOSSIBILITY FOR THE BOARD TO INTERVIEW EACH EMPLOYEE ON WHOSE BEHALF DOCUMENTARY EVIDENCE OF MEMBERSHIP IS FILED IN A CERTIFICATION APPLICATION. THE BOARD ACCORDINGLY MUST PLACE HEAVY RELIANCE ON THE STATEMENTS CONTAINED IN FORM 9 WHICH IT ACCEPTS AT FACE VALUE. SINCE THE BOARD IS COMPELLED TO RELY TO SUCH AN EXTENT ON FORM 9 IN CONSIDERING THE ADEQUACY OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT, ANY FAILURE TO MAKE FULL DISCLOSURE OF ALL THE MATERIAL FACTS MUST WEIGH HEAVILY AGAINST THE APPLICANT.

14. THE IMPORTANCE OF THE WRITTEN ASSURANCES CONTAINED IN THE PRESENT FORM 8 IS REFLECTED IN THE CONSEQUENCE OF A FAILURE TO FILE THE FORM. WHILE THE BOARD HAS NOT REQUIRED STRICT COMPLIANCE WITH SECTION 6 OF ITS RULES AS TO THE TIME FOR FILING A FORM 8 AND HAS IN PRACTICE ACCEPTED THEM IF FILED AT THE HEARING, IF NONE IS IN FACT FILED, THIS WILL RESULT IN THE DISMISSAL OF THE APPLICATION. REFERENCE IS MADE TO ESSEX WIRE CORPORATION LIMITED, SUPRA. AS THE BOARD POINTED OUT IN THAT CASE, THE INFORMATION CONTAINED IN THE FORM GOES TO THE ROOT OF THE MEMBERSHIP EVIDENCE FILED BY AN APPLICANT.

15. NOW THERE IS ANOTHER MATTER IN CONNECTION WITH THE FILING OF FORM 8 WHICH MUST NOT BE OVERLOOKED AND THAT IS THE FACT THAT THE PERSON COMPLETING THE FORM HAS A DUTY TO INFORM HIMSELF OF THE FACTS SO AS TO BE SATISFIED THAT THERE ARE NO IRREGULARITIES WHICH OUGHT TO BE DISCLOSED. IN MANY CASES THAT PERSON WILL NOT HAVE PERSONAL KNOWLEDGE OF THE FACTS CONCERNING THE ORGANIZING CAMPAIGN AND SO IT IS INCUMBENT ON HIM TO MAKE INQUIRIES IN ORDER TO COMPLETE THE FORM. FAILURE ON HIS PART OR ON THE PART OF THOSE PERSONS UNDER HIM RESPONSIBLE FOR DIRECTING THE CAMPAIGN, TO MAKE THE NECESSARY INQUIRIES HAS HAD SERIOUS REPERCUSSIONS FOR AN APPLICANT TRADE UNION. SEE, FOR EXAMPLE, THE NATIONAL STEEL CAR CORPORATION LIMITED CASE, SUPRA. THAT DECISION IS PARTICULARLY SIGNIFICANT HAVING REGARD TO THE FACT THAT THE APPLICATION WAS DISMISSED BECAUSE OF A FAILURE OF RESPONSIBLE OFFICIALS OF THE APPLICANT TRADE UNION TO MAKE INQUIRIES EVEN THOUGH THERE WAS NO EVIDENCE BEFORE THE BOARD THAT ANY IRREGULARITIES IN FACT EXISTED WITH RESPECT TO THE MEMBERSHIP EVIDENCE FILED IN SUPPORT OF THE APPLICATION AND DESPITE THE FACT THAT THE BOARD HAD CONDUCTED A REPRESENTATION VOTE ALTHOUGH, ADMITTEDLY, THE BALLOTS HAD NOT BEEN COUNTED.

16. IT IS CLEAR, THEN, THAT A TRADE UNION, APPLYING FOR CERTIFICATION, HAS THE RESPONSIBILITY OF SATISFYING ITSELF THAT THE MATTERS DEALT WITH IN FORM 8, HAVE BEEN PROPERLY INVESTIGATED BY THE PERSON COMPLETING THAT FORM AND, FURTHER, THAT ANY EXCEPTIONS ARE DULY NOTED ON THE FORM. IT IS ALSO CLEAR, HOWEVER, THAT THAT RESPONSIBILITY EXTENDS BEYOND THE MATTERS ENUMERATED IN PARAGRAPH 3 OF THE FORM, THAT IS, THAT THE COLLECTOR NAMED ON THE RECEIPT OR OTHER ACKNOWLEDGEMENT OF PAYMENT ACTUALLY COLLECTED THE MONEY AND THAT THE PERSON TO WHOM THE RECEIPT WAS ISSUED, AS HAVING PAID MONEY TOWARDS DUES OR INITIATION FEES, ACTUALLY PAID THE MONEY ON HIS OWN BEHALF TO THE PERSON SHOWN AS THE COLLECTOR. THIS IS WELL ILLUSTRATED IN A RECENT DECISION OF THE BOARD, AS YET UNREPORTED, IN THE FRANK LICARI & SONS CASE, APRIL 1967, BOARD FILE NO. 12815-66-R. IN THAT CASE

THE MEMBERSHIP EVIDENCE FILED WAS FOUND TO HAVE MISLED THE BOARD IN A NUMBER OF WAYS, ONE OF WHICH IS SET OUT IN THE DECISION IN THIS FASHION:

...HOWEVER, EVEN THE ONE APPLICATION AND RECEIPT FILED BY THE APPLICANT WAS MISLEADING. ONE OF THE REQUIREMENTS OF THE BOARD IS THAT THE APPLICATION CARD BE SIGNED AND THE MONEY BE PAID WITHIN CERTAIN TIME LIMITS IN RELATION TO THE DATE OF THE APPLICATION. IT IS THEREFORE IMPORTANT THAT THE DATE ON THE CARD AND THE RECEIPT BE ACCURATE BECAUSE THIS DATE IS USED BY THE BOARD IN DETERMINING WHETHER THE REQUIREMENTS AS TO TIME HAVE BEEN MET. THE DATE ON THE CARD FILED IN THIS CASE WAS MISLEADING BECAUSE ALTHOUGH IT WAS THE DATE THE CARD WAS SIGNED, IT WAS NOT THE DATE ON WHICH THE MONEY WAS PAID. THAT HAD OCCURRED SOME MONTHS PREVIOUSLY.

AFTER DEALING WITH OTHER WAYS IN WHICH THE MEMBERSHIP EVIDENCE WAS MISLEADING, THE BOARD GOES ON TO SAY:

...AS HAD BEEN POINTED OUT IN MANY DECISIONS, THE BOARD IS DEPENDENT TO A LARGE EXTENT ON THE DOCUMENTARY EVIDENCE FILED BY THE UNION BECAUSE IT WOULD BE AN IMPOSSIBLE TASK FOR IT TO VERIFY THE MEMBERSHIP EVIDENCE FOR EVERY INDIVIDUAL BY CONDUCTING A PERSONAL INQUIRY. IT IS INCUMBENT, THEREFORE, UPON UNIONS TO BE MOST CIRCUMSPECT WITH THE DOCUMENTARY EVIDENCE THEY FILE AND TO MAKE SURE THAT IT IS ACCURATE IN ALL RESPECTS.

17. AS IN CASES DEALING WITH DISCLOSURE REQUIRED BY FORM 8, THIS DECISION REFLECTS THE DEPENDENCE OF THE BOARD ON DOCUMENTARY EVIDENCE OF MEMBERSHIP AND THE CORRESPONDING DUTY ON THE PART OF AN APPLICANT TRADE UNION TO ENSURE THAT SUCH EVIDENCE DOES NOT MISLEAD THE BOARD IN ANY WAY.

18. WE TURN NOW TO CONSIDER THE FORM 8 FILED IN THIS CASE. AS WE FOUND ABOVE, THAT PARTICULAR DOCUMENT IS MISLEADING IN THAT MANY OF THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS FILED WITH THE BOARD AS COLLECTORS WERE NOT THE PERSONS WHO ACTUALLY COLLECTED THE MONEY PAID ON ACCOUNT OF DUES OR INITIATION FEES AND, FURTHER, IN THE SAME NUMBER OF INSTANCES, THE MEMBERS DID NOT PAY THE COLLECTORS WHOSE NAMES APPEAR ON THE RECEIPTS. WHILE THERE MAY NOT HAVE BEEN ANY DELIBERATE ATTEMPT TO MISLEAD THE BOARD, IT IS CLEAR THAT SUCH DOCUMENT WAS IN FACT MISLEADING AND WAS SIGNED BY BELL, A RESPONSIBLE OFFICER OF THE APPLICANT UNION WHO KNEW THE TRUE FACTS. ACCORDING TO BELL'S EVIDENCE HE DID NOT READ FORM 8 CAREFULLY AND ONLY UNDERSTOOD

IT TO MEAN THAT A DOLLAR HAD IN FACT BEEN PAID. IF THIS BE THE CASE, THEN AT BEST, IT AMOUNTS TO THAT KIND OF LAXNESS WHICH THE BOARD HAS HELD TO BE INEXCUSABLE IN OTHER CASES. SEE KENORA DISTRICT HOME FOR THE AGED, O.L.R.B. MONTHLY REPORT, APRIL 1960, P. 28, VOLKSWAGEN CANADA LTD., O.L.R.B. MONTHLY REPORT, JUNE 1960, P. 112. NOR CAN WE ACCEPT THE PLEA THAT THE OFFICER IN QUESTION WAS INEXPERIENCED IN LABOUR RELATIONS MATTERS. SURELY SUCH INEXPERIENCE DOES NOT EXCUSE A PERSON FROM READING A DOCUMENT BEFORE SIGNING IT, ESPECIALLY IN A MATTER WHICH HE MUST HAVE KNOWN WAS GOING TO BE BITTERLY CONTESTED. IN ANY EVENT, IT IS CLEAR THAT HE WAS BEING ASSISTED BY A PERSON EXPERIENCED IN LABOUR RELATIONS MATTERS, IF NOT IN THIS PROVINCE, THEN IN QUEBEC. FURTHER, WE CANNOT OVERLOOK THE FACT THAT THE DOCUMENT WAS PREPARED BY THE APPLICANT'S SOLICITORS AND SIGNED IN THEIR OFFICES. WHILE WE DO NOT KNOW WHAT TRANSPIRED ON THIS OCCASION, AND WHILE WE DO NOT SUGGEST THAT COUNSEL FOR THE APPLICANT HAD ANY KNOWLEDGE OF THE TRUE STATE OF AFFAIRS UNTIL MUCH LATER, NEVERTHELESS, ADVICE WAS AVAILABLE TO BELL IF HE DID NOT FULLY UNDERSTAND WHAT WAS REQUIRED.

19. IN SHORT, THEN, THE FAILURE OF BELL TO DISCLOSE THE FACTS CONCERNING THE RECEIPTS SUBMITTED TO THE BOARD SEEMS TO FALL SQUARELY WITHIN THAT TYPE OF CONDUCT WHICH AS IS SAID IN SO MANY CASES, "MUST WEIGH HEAVILY AGAINST AN APPLICANT". HOWEVER, IT IS ARGUED THAT THE CONDUCT ENVISAGED BY THE CASES REFERRED TO MUST RELATE TO A FAILURE TO DISCLOSE THE FACT THAT A MEMBER DID NOT PAY ANY MONEY, ALTHOUGH A RECEIPT WAS TENDERED SHOWING PAYMENT, AND CASES OF A SIMILAR NATURE. IN THIS CONNECTION, COUNSEL FOR THE APPLICANT REFERRED TO THE GLOBE AND MAIL LIMITED CASE, SUPRA, AND CITED THE FOLLOWING PASSAGE THEREFROM AT P. 1202 (C.L.L.C.):

"...WHILE FORMS 8 AND 9 ARE NOT IN AFFIDAVIT FORM, THE BOARD REGARDS THEM AS IMPORTANT DOCUMENTS AND IF THEY CONTAIN FALSE STATEMENTS OR INACCURATE STATEMENTS RESULTING FROM CARELESSNESS ON THE PART OF THE PERSON SIGNING, THIS MAY WELL WEIGH HEAVILY AGAINST AN APPLICANT."

IN COUNSEL'S VIEW, THIS MEANS THAT IF THERE HAS BEEN CARELESSNESS IN COMPLETING FORM 8 (THEN FORM 9) THIS WILL ONLY AFFECT THE WEIGHT TO BE GIVEN THE MEMBERSHIP EVIDENCE BUT WOULD NOT AFFECT ITS ADMISSIBILITY UNLESS THERE HAS BEEN SHOWN TO EXIST "NON-PAYS" OR FORGERIES, AND SINCE NONE HAS BEEN SHOWN TO HAVE OCCURRED AT THIS STAGE, THE BOARD SHOULD NOT REJECT THE APPLICATION BUT

UGHT TO CONTINUE ITS INQUIRY INTO ALL THE ALLEGATIONS MADE WITH RESPECT TO MATTERS OF THAT NATURE.

20. IN THE FIRST PLACE, THE QUOTATION FROM THE GLOBE & MAIL LIMITED CASE DOES NOT IN OUR VIEW STAND FOR ANY DIFFERENT PROPOSITION THAN THAT OUTLINED IN THE CASES REFERRED TO EARLIER. THE WORDS "MAY WELL WEIGH HEAVILY AGAINST AN APPLICANT" APPEAR IN MOST OF THE PASSAGES CITED FROM THOSE DECISIONS. IF ANYTHING, THE PASSAGE MAKES IT CLEAR THAT CARELESSNESS IN COMPLETING FORM 8 MAY JUSTIFY THE BOARD IN DISMISSING AN APPLICATION. FURTHER, THE CASES THEMSELVES DO NOT IN OUR VIEW STAND FOR THE DISTINCTION WHICH COUNSEL SEEKS TO MAKE. ALL MAKE IT CLEAR THAT IT IS WEIGHT, NOT ADMISSIBILITY PER SE, WHICH IS IN ISSUE. HOWEVER, IT IS THE FAILURE TO DISCLOSE WHICH AFFECTS THE WEIGHT WHICH THE BOARD MAY GIVE THE MEMBERSHIP EVIDENCE. THE WEBSTER AIR EQUIPMENT CASE IS QUITE CLEAR ON THIS POINT.

21. WHILE IT MAY BE TRUE THAT IN MOST OF THE CASES THE FAILURE TO DISCLOSE OF THE CARELESSNESS REFERS TO A FAILURE TO DISCLOSE "NON-PAYS" OR "NON-SIGNS", WE DO NOT ACCEPT THE PROPOSITION THAT THESE "IRREGULARITIES" ARE THE ONLY ONES WHICH "MAY WEIGH HEAVILY AGAINST AN APPLICANT" IF NOT DISCLOSED. THE WEBSTER AIR EQUIPMENT CASE SPEAKS OF "A FAILURE TO MAKE FULL DISCLOSURE OF ALL MATERIAL FACTS". IT IS SURELY NOT OPEN TO ARGUMENT THAT IF THE FORM 8, AS IT DOES, REQUIRES INSTANCES WHERE THE PERSON SIGNING AS COLLECTOR HAS NOT IN FACT RECEIVED THE MONEY TO BE DISCLOSED, THESE ARE NOT MATERIAL FACTS WITHIN THE MEANING OF THAT DECISION.

22. HOWEVER, THE MATTER MAY BE LOOKED AT IN ANOTHER WAY. IF THE TRUE FACTS HAD BEEN DISCLOSED IN THIS CASE, THE BOARD WOULD THEN HAVE BEEN AWARE THAT WHAT THE APPLICANT WAS SEEKING TO DO WAS TO GET OVER THE PROBLEM IT WAS FACED WITH, THAT IS, OF SIGNING UP MEMBERS INTO A NON-EXISTENT ORGANIZATION. WHETHER OR NOT IT WAS SUCCESSFUL IN DOING SO IS NOT THE ISSUE BEFORE US AT THIS STAGE. THE POINT IS THAT THE APPLICANT AND BELL WERE AWARE THAT IT WAS A PROBLEM AND ACTION WAS ACCORDINGLY TAKEN TO OVERCOME IT. THE STEPS TAKEN TO SOLVE THE PROBLEM MUST FALL INTO THE CATEGORY OF "MATERIAL FACTS" SINCE THE APPLICANT STOOD TO WIN OR LOSE ITS CASE ON WHAT IT DID, DEPENDING ON HOW THE BOARD VIEWED THAT ACTION IN THE LIGHT OF ITS ESTABLISHED POLICIES ON THAT QUESTION.

23. FINALLY, ON THE SUBJECT OF DISCLOSURE, WHILE NO SERIOUS ARGUMENT WAS ADVANCED BASED ON THE FACT THAT THE APPLICANT ULTIMATELY MADE FULL DISCLOSURE TO THE BOARD,

WE FEEL CONSTRAINED TO MAKE IT CLEAR THAT SUCH DISCLOSURE IS NOT OF THE KIND ENVISAGED IN THE DECISIONS OF THE BOARD. THIS IS NOT A CASE WHERE A RESPONSIBLE OFFICER DISCOVERS AN IRREGULARITY BY A RANK-AND-FILE EMPLOYEE AND IMMEDIATELY BRINGS IT TO THE ATTENTION OF THE BOARD. WHAT WE ARE FACED WITH HERE IS A DISCLOSURE OF FACTS, KNOWN TO RESPONSIBLE PERSONS IN THE UNION, ONLY AFTER ANOTHER PARTY TO THE PROCEEDINGS HAS MADE ALLEGATIONS RESPECTING THE MEMBERSHIP EVIDENCE. IT IS SURELY NO ANSWER TO SAY THAT THE ALLEGATIONS IN THE INTERVENTION DID NOT REVEAL THE PRECISE STATE OF AFFAIRS. IN ANY EVENT, PARTICULARS WERE DEMANDED AND GIVEN, AND THE PARTICULARS WERE REASONABLY CLOSE TO THE TRUTH. EVEN IN THE FACT OF THESE PARTICULARS, NOTHING WAS BROUGHT TO THE ATTENTION OF THE BOARD AT THE FIRST HEARING. HAVING REGARD TO THE EVIDENCE AND ALL THE CIRCUMSTANCES OF THIS CASE, WE ARE DRIVEN TO THE CONCLUSION THAT THE TRUE STATE OF AFFAIRS MIGHT WELL NOT HAVE COME TO OUR ATTENTION SAVE FOR THE INTERVENER'S ALLEGATIONS. WE REITERATE WE DO NOT REGARD THE DISCLOSURES ULTIMATELY MADE HERE AS DISCLOSURES WITHIN THE MEANING OF THE BOARD'S DECISIONS ON THIS POINT. WE HASTEN TO ADD, HOWEVER, THAT NOTHING WE HAVE SAID IS INTENDED TO SUGGEST THAT COUNSEL FOR THE APPLICANT WITHHELD INFORMATION FROM THE BOARD.

24. THERE IS ANOTHER ASPECT OF THE FORM 8 WHICH MUST BE CONSIDERED IN THIS CASE. AS WAS POINTED OUT ABOVE IN DEALING WITH THE NATIONAL STEEL CAR CORPORATION LIMITED CASE, THERE IS A DUTY ON A PERSON COMPLETING FORM 8 TO MAKE INQUIRIES RESPECTING THE MATTERS SET OUT IN THE FORM IF THAT PERSON DOES NOT HAVE PERSONAL KNOWLEDGE OF THOSE MATTERS. IN THE PRESENT CASE, WE ARE NOT SATISFIED THAT BELL MADE THE INQUIRIES HE PURPORTS TO HAVE MADE BY SIGNING THE FORM. IF HE HAD, THEN HE OUGHT TO HAVE KNOWN THE APPROXIMATE NUMBER OF CASES WHERE NEW CARDS AND RECEIPTS WERE ISSUED TO PERSONS WHO COULD NOT PRODUCE THEIR OLD RECEIPTS. THE PLAIN FACT IS THAT ON HIS OWN TESTIMONY HE WAS NOT CONCERNED WITH THE MATTERS SET OUT IN FORM 8 BUT ONLY WITH WHETHER THE MONEY HAD BEEN PAID. EVEN ON THIS POINT HIS TESTIMONY REVEALS THAT HE WAS PROBABLY NOT IN A POSITION TO MAKE THE STATEMENT HE SAYS HE BELIEVED HE WAS MAKING WHEN HE SIGNED THE FORM. IN HIS OWN WORDS, "THE PERSONS TO WHOM HE DIRECTED HIS INQUIRIES" ALL ASSURED HIM "MORE OR LESS" THAT THE PERSONS TO WHOM NEW CARDS WERE ISSUED HAD PAID. COUNSEL FOR THE INTERVENER CHOSE TO DESCRIBE BELL'S APPROACH TO FORM 8 AS A "CASUAL" ONE. WE ARE INCLINED TO TAKE A SOMEWHAT LESS CHARITABLE VIEW.

25. THERE IS ONE FINAL MATTER WHICH MUST BE CONSIDERED. IN DEALING WITH THE LICARI & SONS CASE, ABOVE, WE POINTED

OUT THAT THE DUTY TO DISCLOSE EXTENDS BEYOND THE MATTERS SET FORTH IN THE FORM 8. BOTH THAT CASE AND THE VALLEY TRANSPORTATION COMPANY LIMITED CASE MAKE IT CLEAR THAT THERE IS A DUTY ON THE APPLICANT TO TAKE ALL NECESSARY PRECAUTIONS AND CARE TO ENSURE THAT THE INFORMATION CONTAINED IN THE MEMBERSHIP EVIDENCE, AS WELL AS THE FORM 8, IS TRUE AND ACCURATE. CLEARLY IN THIS CASE THE RECEIPTS FILED ARE NOT TRUE AND ACCURATE. NOT ONLY IS THIS SO WITH RESPECT TO THE COLLECTORS BUT ALSO WITH RESPECT TO THE DATES ON THE RECEIPTS. THESE WERE NOT THE DATES ON WHICH THE MONEY WAS PAID, AND WE THUS HAVE A SITUATION ANALOGOUS TO THAT IN THE LICARI AND SONS CASE. WHILE COUNSEL FOR THE APPLICANT SUGGESTED IN ARGUMENT THAT THE WORDING OF THE RECEIPT DOES NOT IN FACT STATE THAT MONEY WAS PAID ON THE DATE SET OUT IN THE RECEIPT, HAVING REGARD TO THE CONTENTS OF BOTH THE FRONT AND THE BACK OF THE CARD, WE HAVE NO DOUBT THAT ANY REASONABLE PERSON EXAMINING THE WHOLE CARD WOULD CONCLUDE THAT THE MONEY WAS PAID ON THE DATE STATED IN THE RECEIPT. THIS WOULD BE PARTICULARLY TRUE WHERE THE DATES ON THE CARD AND RECEIPT COINCIDE AND THIS WAS THE CASE FOR MOST OF THE CARDS SUBMITTED IN THE PLACE AND STEAD OF THE CARDS SIGNED PRIOR TO MARCH 5.

26. TO RECAPITULATE BRIEFLY, THE FORM 8 FILED BY THE APPLICANT CONTAINS FALSE AND MISLEADING STATEMENTS ON MATERIAL FACTS, AND THE PERSON SIGNING THE FORM 8 KNEW OR OUGHT TO HAVE KNOWN, IF HE HAD EXERCISED PROPER CARE, THAT THE FORM WOULD MISLEAD THE BOARD. THE PERSON IN QUESTION WAS INEXCUSABLY LAX, NOT ONLY IN CONNECTION WITH COMPLETING FORM 8, BUT ALSO IN MAKING THE INQUIRIES ON WHICH THE STATEMENTS IN THE FORM WERE ALLEGEDLY BASED.

27. COUNSEL FOR THE APPLICANT SUBMITTED THAT THE BOARD SHOULD RELIEVE AGAINST WHAT HE REFERRED TO AS "TECHNICAL ERRORS" AND FAILURE TO DO SO, HE ARGUED, WOULD BE UNDULY BURDENSOME ON THE APPLICANT. IT IS OUR VIEW, HOWEVER, THAT THE SITUATION REVEALED HERE FALLS SQUARELY WITHIN THE PRINCIPLES LAID DOWN IN THE DECISIONS WE HAVE REFERRED TO. ADMITTEDLY, THE RESULT MAY SEEM HARSH TO AN APPLICANT, NO ONLY THE APPLICANT IN THIS CASE, BUT ALSO, FOR EXAMPLE, THE UNION INVOLVED IN THE NATIONAL STEEL CAR CORPORATION LIMITED CASE. HOWEVER, AS THE CASES SHOW, THE BOARD'S DEPENDENCE ON THE TRUTH AND ACCURACY OF THE DOCUMENTARY EVIDENCE OF MEMBERSHIP, INCLUDING THE FORM 8, FILED BY AN APPLICANT CARRIES WITH IT A CORRESPONDING OBLIGATION ON THE PART OF SUCH APPLICANT TO ENSURE THAT THE EVIDENCE SUBMITTED IS TRUE AND ACCURATE AND DOES NOT MISLEAD THE BOARD.

1943-72-JD: INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA, LOCAL 482 (COMPLAINANT) v. THE KINGSTON TYPOGRAPHICAL UNION NO. 204, I.T.U., AND THE KINGSTON-WHIG-STANDARD COMPANY LIMITED (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: IAN SCOTT AND PURDY CHURCHILL FOR THE COMPLAINANT; J. NELLIGAN AND F. CREMONESI FOR THE KINGSTON TYPOGRAPHICAL UNION NO. 204, I.T.U.; D.G. CUNNINGHAM AND W.J. SUTCLIFFE FOR THE KINGSTON-WHIG-STANDARD COMPANY LIMITED.

DECISION OF THE BOARD:

NOVEMBER 13, 1972.

1. THE KINGSTON-WHIG-STANDARD COMPANY LIMITED PRODUCES A NEWSPAPER. IT IS PRESENTLY INTRODUCING NEW PROCESSES AND MACHINERY WHICH HAS RESULTED IN A JURISDICTIONAL DISPUTE BETWEEN THE KINGSTON TYPOGRAPHICAL UNION NO. 204, I.T.U. (HEREINAFTER REFERRED TO AS THE "I.T.U.") AND THE INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA, LOCAL 482 (HEREINAFTER REFERRED TO AS THE "PRESSMEN"). GENERALLY SPEAKING THE I.T.U. DOES COMPOSING ROOM WORK WHICH IN LAY TERMS MAY BE DESCRIBED AS THE SETTING UP AND ARRANGING OF PRINTING MATERIALS WHICH INCLUDES WORDS AND PHOTOS TO THE POINT WHERE THE FINAL SET UP OR ARRANGEMENT MAY BE CONVERTED TO A PLATE. THE NEXT STEP IS TO CONVERT THIS COMPLETED SET UP OR ARRANGEMENT INTO A PLATE WHICH CAN BE PLACED ON A PRESS. IN LARGE NEWSPAPERS THIS FUNCTION, I.E., PLATEMAKING, IS OFTEN PERFORMED BY A STEREOTYPERS UNION.

2. THE FINAL STAGE IN THE PRODUCTION OF THE NEWSPAPER IS TO PLACE PLATES ON A PRESS WHERE THEY COME IN CONTACT WITH NEWSPRINT. THE FUNCTION OF RUNNING THE PRESSES HAS TRADITIONALLY BELONGED TO THE PRESSMEN'S UNION.

3. THE PROBLEM IN THIS CASE IS THAT HERE, AS IN MANY SMALLER NEWSPAPERS, THERE IS NO STEREOTYPERS UNION TO PERFORM THE MID-PROCESS BETWEEN COMPOSITION AND PRESS WORK AND THE ISSUE IS WHETHER THE PLATEMAKING FUNCTION IS TO BE PERFORMED BY THE I.T.U. OR THE PRESSMEN.

4. THE EMPLOYER HAS ASSIGNED THE WORK TO THE I.T.U. BASED ON WHAT IT CONSIDERS TO BE THE PRACTICE IN COMPARABLY SIZED NEWSPAPERS. THE PRESSMEN TAKE THE POSITION THAT WHERE NO STEREOTYPERS UNION EXISTS THAT THEY SHOULD PERFORM THE WORK, AND FURTHER THAT WHERE THE NEW EQUIPMENT REPLACES WORK THAT HAD TRADITIONALLY BEEN PERFORMED BY PRESSMEN THAT THE OPERATION OF THE NEW EQUIPMENT SHOULD BE ASSIGNED TO PRESSMEN. THEY RELY ON THE PRINCIPLE REFERRED TO IN A NUMBER OF UNITED STATES AUTHORITIES THAT WHERE A FUNCTION IS AUTOMATED THAT THE PEOPLE WHO FORMERLY PERFORMED THE FUNCTION SHOULD BE GIVEN THE OPPORTUNITY TO PERFORM THE SAME AUTOMATED FUNCTION.

5. THE I.T.U. POSITION IS THAT STEREOTYPING IS A DUPLICATING FUNCTION AND WHILE UNDER THE OLD PROCESS A STEREOTYPER WOULD CONVERT THE COMPOSING ROOM END PRODUCT INTO A PLATE THAT PLATEMAKING IS NOT SOLELY A STEREOTYPERS FUNCTION. THEY CLAIM PHOTOENGRAVERS ALSO MAKE PLATES AND THAT THE PROCESSES IN DISPUTE ARE PHOTOENGRAVING PROCESSES WHICH ARE TRADITIONALLY PART OF THE COMPOSING ROOM WORK.

6. MORE SPECIFICALLY, THE ISSUE IN THIS CASE ARISES FROM THE INTRODUCTION BY THE EMPLOYER OF A PHOTOCOMPOSITION PROCESS OR A COLD TYPE PROCESS. AT THE TIME OF THE HEARING A PORTION OF THE NEWSPAPER WAS BEING PRODUCED BY THE PHOTOCOMPOSITION METHOD. THE PRESSMEN HAVE ASKED FOR A DETERMINATION WHICH TAKES INTO CONSIDERATION THE FACT THAT THE COMPLETED NEWSPAPER MAY ONE DAY BE PRODUCED BY THE PHOTOCOMPOSITION PROCESS. HOWEVER, THE EVIDENCE INDICATES THAT NO DECISION HAS YET BEEN MADE AS TO WHETHER THE COMPLETED NEWSPAPER WILL BE PRODUCED BY PHOTOCOMPOSITION AND SINCE THE EVIDENCE IN THAT REGARD IS HIGHLY SPECULATIVE WE PREFER TO EXAMINE THE SITUATION AS IT PRESENTLY EXISTS AND NOT BASE OUR DECISION ON FUTURE DEVELOPMENTS THAT MAY OR MAY NOT OCCUR.

7. UNDER THE OLD PROCESS NEWS STORIES OR COPY WERE SENT TO THE COMPOSING ROOM AND SET IN LEAD TYPE BY COMPOSITORS BELONGING TO THE I.T.U. AT THE END OF THE PROCESS THE COMPOSITORS PLACE THE LEAD TYPE IN AN ORDERLY FASHION IN A GALLEY OR TRAY WHICH IS KNOWN AS A "CHASE".

8. THE NEWSPAPERS' ADVERTISING IS HANDLED IN A DIFFERENT WAY. THE WORDS ARE SET IN TYPE BY COMPOSITORS BUT THE DRAWINGS ARE OBTAINED DIRECTLY FROM THE CUSTOMER OR FROM A MAT SERVICE. THE MAT IS A CARDBOARD LIKE SURFACE WITH DEPRESSED AREA WHICH IS MARKED UP IN THE COMPOSING ROOM AND SENT TO A FLAT PLATE CASTER WHO PRODUCES A METALLIC PLATE FROM THE CARDBOARD MAT. THE METALLIC PLATE IS THEN CUT AND SMOOTHED (SHAVED AND ROUTED) AND RETURNED TO THE COMPOSING ROOM WHERE THE WORDS FOR THE ADVERTISEMENT AND THE METALLIC PLATE ARE INTEGRATED TO FORM A COMPLETED AD AND THEN PLACED IN THE CHASE ALONG WITH NEWS STORIES AND PHOTOS WHICH HAVE ALSO BEEN PROCESSED. AT THE KINGSTON-WHIG-STANDARD COMPANY LIMITED THE FLAT CASTING IS DONE BY THE PRESSMEN AND ALL OTHER FUNCTIONS ARE PERFORMED BY THE I.T.U. AS PART OF THEIR COMPOSING ROOM FUNCTION.

9. THE CHASE IS THEN CARTED TO A MAT ROLLER WHERE IT IS DUPLICATED TO FORM A CARDBOARD MAT WHICH IS THEN RECONVERTED TO A SEMI-CIRCULAR METAL PLATE WHICH CAN BE FITTED ONTO THE CIRCULAR PRESSES. THIS WORK IS PERFORMED BY THE PRESSMEN.

10. THE NEW COLD TYPE PROCESS INTRODUCES A CAMERA AND A PHOTOCOMPOSITION PROCESS INTO EXISTING METHODS OF PRODUCTION. SOME WORK WITH RESPECT TO ADVERTISEMENTS IS PERFORMED IN THE SAME FASHION AS PREVIOUSLY, WHILE OTHER ADVERTISING IS RECEIVED WHICH CAN BE PHOTOGRAPHED BY THE CAMERA SO AS TO PRODUCE A NEGATIVE. THE NEGATIVE IS PLACED ON A ZINC PLATE WHERE LIGHT IS APPLIED WHICH ALTERS THE CON-

SISTENCY OF THE METAL. THE METALLIC PLATE IS THEN PLACED IN A MACHINE WHICH HARDENS CERTAIN AREAS AND WASHES AWAY OTHERS, AND IS THEN PLACED IN AN ETCHING MACHINE WHICH SPLASHES ACID AGAINST THE SURFACE OF THE PLATE RESULTING IN THE PROTECTED AREAS OF THE PLATE REMAINING IN A HIGH POSITION WHILE OTHER AREAS ARE ETCHED TO PRODUCE A RELIEF IMAGE. THE ENGRAVED PLATE IS THEN TAKEN FROM THE ETCHING MACHINE, RINSED AND TRIMMED TO SIZE AND THEN FORWARDED TO THE COMPOSING ROOM WHERE IT IS INTEGRATED INTO THE CHASE WITH THE OTHER ELEMENTS WHICH WERE PRODUCED AS THEY HAD FORMERLY BEEN PRODUCED. THESE CHEMICAL PROCESSES IN PRODUCING THE PLATE HAVE BEEN REFERRED TO AS STRIPPING, OPAQUING AND ETCHING AND THE DISPUTED PROCESS INCLUDE THE OPERATION OF THE CAMERA TO THE POINT WHERE THE PLATE IS PRODUCED READY TO BE SENT TO THE COMPOSING ROOM.

11. THE PHOTOCOMPOSITION PROCESS TAKES PLACE IN A SEPARATE AREA ADJACENT TO THE COMPOSING ROOM BUT ON A SEPARATE FLOOR FROM THE PRESSES. WE NOW TURN TO ASSES THE MERITS OF THE DISPUTE.

AREA AND INDUSTRY PRACTICE

12. WHILE THE INTRODUCTION OF THE NEW PROCESSES ARE TAKING PLACE IN A LIMITED NUMBER OF NEWSPAPERS A REVIEW OF THOSE SITUATIONS WHERE THE COLD METAL PROCESS HAS BEEN INTRODUCED INDICATES THAT IN THE MAJORITY OF CASES THE WORK IN DISPUTE HAS BEEN ASSIGNED TO EMPLOYEES IN THE COMPOSING ROOM. THERE IS EVIDENCE THAT MEMBERS OF THE I.T.U. PERFORM THE WORK IN THE BRANTFORD EXPOSITOR, ST. CATHARINES STANDARD, WOODSTOCK SENTINEL REVIEW, NIAGARA FALLS REVIEW AND THE STRATFORD BEACON HERALD. THE EVIDENCE ALSO INDICATES THAT THE CAMERA WORK IS ASSIGNED TO PRESSMEN AT THE HAMILTON SPECTATOR AND AT A NEWSPAPER IN ST. THOMAS WHERE, HOWEVER, THERE IS PRESENTLY A DISPUTE PENDING BETWEEN THE PRESSMEN AND THE I.T.U. AFTER ALLOWING FOR THE DIFFERENCES IN UNION REPRESENTATION AND THE PARTICULAR INDIVIDUAL SITUATIONS WE FIND THAT THIS FACTOR WEIGHS SLIGHTLY IN FAVOUR OF THE I.T.U.

JOB LOSS

13. THE EFFECT OF THE INTRODUCTION OF THE NEW PROCESSES ON JOB LOSS IS SOMEWHAT UNUSUAL. THE EMPLOYER IS REQUIRED TO EMPLOY ELEVEN PRESSMEN AND TWO APPRENTICES UNDER THE TERMS OF THE COLLECTIVE AGREEMENT. THE INTRODUCTION OF THIS WORK WILL NOT RESULT IN ANY LOSS OF JOBS BY JOURNEYMEN PRESSMEN. ONE APPRENTICE IS FINISHING HIS APPRENTICESHIP TRAINING AND WOULD LIKELY GO ELSEWHERE, SO THAT HE WOULD NOT SUFFER A JOB LOSS. IN ADDITION, IF THE WORK WAS TO BE GIVEN TO THE PRESSMEN IT WOULD REQUIRE AN INCREASE IN THE NUMBER OF PRESSMEN EMPLOYED BY THE EMPLOYER. ON THE OTHER HAND THE EFFECT OF INTRODUCING A NEW PROCESS WOULD APPEAR TO RESULT IN SOME JOB LOSS TO THE MEMBERS OF THE I.T.U. THERE ARE FIFTY-FIVE EMPLOYEES WHO BELONG TO THE I.T.U. THERE WOULD BE SOME FLEXIBILITY IN DEPLOYING THOSE PERSONS SO AS TO RESULT IN A LIMITED JOB LOSS.

14. WE ARE THEREFORE FACED WITH A SITUATION WHERE TO GIVE WORK

TO THE PRESSMEN WOULD RESULT IN NO JOB LOSS TO EXISTING EMPLOYEES AND MIGHT CREATE A SITUATION WHERE IT WAS NECESSARY TO INCREASE PRESSMEN, WHILE AT THE SAME TIME RESULTING IN SOME JOB LOSS TO EMPLOYEES WHO WERE MEMBERS OF THE I.T.U. IF WE WERE TO GIVE THE WORK TO THE EMPLOYEES WHO ARE MEMBERS OF THE I.T.U. THERE WOULD BE NO LOSS OF THOSE EMPLOYEES AND NO JOURNEYMEN OR PRESENT EMPLOYEES WHO WERE PRESSMEN WOULD LOSE THEIR JOBS.

15. WE AGREE WITH THE PRINCIPLE SUGGESTED SO CAREFULLY BY MR. SCOTT, THAT IN AUTOMATED DISPUTES THERE SHOULD BE SOME CONSIDERATION IN GIVING THE WORK TO EMPLOYEES WHO HAD PREVIOUSLY PERFORMED THE FUNCTION USING THE OLD PROCESS SO AS TO MINIMIZE JOB LOSSES. PHILADELPHIA TYPOGRAPHICAL UNION (PHILADELPHIA INQUIRER) (1963) 42 NLRB 36. HOWEVER, IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE WE ARE NOT SATISFIED THAT ASSIGNING THE WORK TO EMPLOYEES OF THE I.T.U. WOULD RESULT IN JOB LOSS TO THE PRESSMEN AND MOREOVER IT WOULD APPEAR THAT AN ASSIGNMENT TO THE PRESSMEN MIGHT RESULT IN SOME JOB LOSS TO EMPLOYEES WHO ARE MEMBERS OF THE I.T.U. IN OUR VIEW WHILE THE EVIDENCE AS TO JOB LOSS IS NOT CONCLUSIVE IT DOES AS A FACTOR TEND TO FAVOUR ASSIGNING THE WORK TO EMPLOYEES WHO ARE MEMBERS OF THE I.T.U.

COLLECTIVE AGREEMENTS

16. IN THIS AREA WE ARE OF THE OPINION THAT THE PRESENT COLLECTIVE AGREEMENTS ARE OF NO ASSISTANCE IN RESOLVING THE DISPUTE. THE LIKELIHOOD IS THAT THEY WERE ENTERED INTO AT A TIME WHEN THE WORK IN DISPUTE WAS NOT CONTEMPLATED AND ACCORDINGLY WE FIND THAT THEIR TERMS ARE NOT APPLICABLE TO THE PRESENT WORK IN DISPUTE.

AVAILABILITY OF CRAFTSMEN AND SKILLS

17. THE I.T.U. HAS EXTENSIVE TRAINING FACILITIES FOR THEIR MEMBERS AND WOULD BE ABLE TO TRAIN THE EMPLOYEES IN THE NEW PROCESS. THEIR SCHOOLS SEEM TO BE HIGHLY DEVELOPED AND THEY ARE PREPARED TO PROVIDE A SERVICE FREE OF CHARGE TO THE EMPLOYER. THE PRESSMEN ON THE OTHER HAND HAVE NO SUCH SCHOOL ALTHOUGH THEY DO PROVIDE CERTAIN AD HOC TRAINING COURSES. BECAUSE OF THE HIGHLY ORGANIZED TRAINING FACILITIES OF THE I.T.U. WE ARE OF THE OPINION THAT NOTWITHSTANDING THAT PRESSMEN CAN BE TRAINED THAT THIS FACTOR ALSO SLIGHTLY FAVOURS AN ASSIGNMENT TO THE EMPLOYEES WHO ARE MEMBERS OF THE I.T.U.

AWARDS

18. THERE ARE NO OTHER AWARDS IN CANADA THAT HAVE BEEN CITED BY THE PARTIES. THIS IS A MATTER OF FIRST IMPRESSION IN THIS JURISDICTION BUT THERE ARE TWO AWARDS IN THE UNITED STATES IN SIMILAR CIRCUMSTANCES WHICH SEEM TO FAVOUR THE I.T.U. SEE LOCAL 9, INTERNATIONAL STEREOTYPERS' AND ELECTROTYPERS' UNION OF NORTH AMERICA, AFL-CIO v. DETROIT FREE PRESS (KNIGHT NEWSPAPERS, INC.) v. LOCAL 18, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, 189 NLRB No. 130; INTERNATIONAL STEREOTYPERS AND ELECTROTYPERS

UNION, LOCAL No. 25, NIAGARA FALLS, N.Y. AND NIAGARA FALLS GAZETTE PUBLISHING CORPORATION ET AL, 193 NLRB No. 16. ACCORDINGLY THIS FACTOR SLIGHTLY FAVOURS THE I.T.U.

EMPLOYER PREFERENCE

19. WE ARE IN AGREEMENT WITH THE SUBMISSIONS BY MR. SCOTT THAT EMPLOYER PREFERENCE MUST BE FOUNDED ON SOME REASONABLE BASIS. IT WOULD APPEAR THAT THE EMPLOYER LOOKED TO SEVERAL NEWSPAPERS AND ATTEMPTED TO ORGANIZE THE PRACTICE IN THE INDUSTRY. WE FIND THAT THE EMPLOYER PREFERENCE BY ITSELF IS NOT A STRONG FACTOR IN RESOLVING THIS PARTICULAR DISPUTE.

20. IN CONCLUSION WHEN WE ASSESS THE RELEVANT FACTORS IN THIS PARTICULAR SITUATION WE FIND THE EVIDENCE LEANS IN FAVOUR OF AN AWARD TO EMPLOYEES WHO ARE MEMBERS OF THE I.T.U., AND ACCORDINGLY WE ASSIGN THE DISPUTED WORK IN QUESTION TO EMPLOYEES WHO ARE REPRESENTED BY MEMBERS OF THE I.T.U. WE WISH TO NOTE THAT OUR DETERMINATION IS LIMITED TO THIS PARTICULAR DISPUTE AND TO THE PARTICULAR FACTS OF THIS CASE.

21. THE BOARD WISHES TO THANK ALL COUNSEL FOR THE MANNER IN WHICH THEY CONDUCTED THIS CASE AND FOR THE EXCELLENCE OF THEIR SUBMISSIONS.

2374-72-R: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES, UNION LOCAL 261, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. THE ALEXANDRA HOTEL (1971) LTD. (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: DENIS J. POWER AND FRANK GRELLA FOR THE APPLICANT; C. T. KELLEY AND DONALD BOOTH FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER O. HODGES, AND BOARD MEMBER J.E.C. ROBINSON, Q.C. CONCURRING IN PART: NOVEMBER 9, 1972.

1. IN THIS APPLICATION FOR CERTIFICATION, THE BOARD, FOLLOWING ITS PRELIMINARY INVESTIGATION INTO ALLEGATIONS THAT SUZANNE COTE AND ETHEL DALEY DID NOT PAY ON THEIR OWN BEHALF AS REGARDS INITIATION FEES RELATING TO THEIR RESPECTIVE APPLICATIONS FOR MEMBERSHIP, CONDUCTED ITS NORMAL INQUIRY INTO THESE MATTERS AT A SPECIAL HEARING IN THIS REGARD ON OCTOBER 19, 1972.

2. THE RELEVANT BACKGROUND, WE FIND IS AS FOLLOWS: THE APPLICANT CONDUCTED ITS ORGANIZATIONAL CAMPAIGN IN RELATION TO THE RESPONDENT'S EMPLOYEES IN JUNE OF 1972. IN THIS REGARD, FRANK GRELLA, THE SECRETARY OF THE APPLICANT ASSIGNED ROLAND D'AMOUR TO THE PREMISES OF THE RESPONDENT. ALTHOUGH RELATIVELY INEXPERIENCED HE WAS GIVEN RESPONSIBILITY

FOR THE CAMPAIGN IN HIS CAPACITY AS A PAID ORGANIZER OF THE APPLICANT. D'AMOUR THEN CONTACTED BRYANT COUGLE, A HEAD WAITER IN THE EMPLOY OF THE RESPONDENT WHO HAD HERETOFORE NEVER TAKEN PART IN AN ORGANIZATIONAL CAMPAIGN. IN ANY EVENT, D'AMOUR TURNED OVER THE MAJORITY OF THE APPLICATION CARDS TO COUGLE AND THE LATTER PROCEEDED TO OBTAIN THE SIGNATURES ON THE CARDS TOGETHER WITH THE REQUIRED DOLLAR PAYMENT.

3. THE EVIDENCE HOWEVER IS CLEAR TO THE EFFECT THAT D'AMOUR, WHOSE NAME IS SHOWN AS COLLECTOR ON ALL OF THE MEMBERSHIP CARDS FILED WITH THE BOARD, WAS NOT IN FACT, IN THE MAJORITY OF CASES, THE PERSON TO WHOM THE DOLLAR WAS ACTUALLY PAID. IN THIS REGARD, WE FIND THAT ALTHOUGH COUGLE DIRECTLY RECEIVED THE MONIES FROM THESE SIGNATORIES, HE IN TURN TRANSFERRED THE CARDS AND PROCEEDS OVER TO D'AMOUR. HOWEVER, D'AMOUR WAS LABOURING UNDER THE MISCONCEPTION THAT HE, AS THE UNION REPRESENTATIVE, WAS REQUIRED TO SIGN THE CARDS AS COLLECTOR. THAT D'AMOUR WAS LABOURING UNDER SUCH A FALSE IMPRESSION WE ATTRIBUTE TO THE LACK OF PROPER INSTRUCTION GIVEN HIM BY HIS SUPERIOR, GRELLA.

4. THE EVIDENCE FURTHER DISCLOSES THAT IT WAS COUGLE WHO OBTAINED THE SIGNATURES ON THE RESPECTIVE MEMBERSHIP CARDS OF MISS COTE AND MRS. DALEY. CONTRARY TO COUGLE'S EVIDENCE, MISS COTE TESTIFIED THAT SHE DID NOT PAY HIM THE DOLLAR. IN ASSESSING THE CREDIBILITY OF WITNESSES WHERE THERE IS A DIRECT CONFLICT IN A MATERIAL MANNER IN THEIR TESTIMONY AND WHERE THE BOARD IS UNABLE TO CHOOSE BETWEEN THEM FROM THE MANNER IN WHICH THEY TESTIFIED, THE BOARD HAS, IN THE PAST, GIVEN EFFECT TO THE WRITTEN STATEMENT SIGNED BY THE PURPORTED MEMBER ACKNOWLEDGING PAYMENT OF THE DOLLAR. (SEE THE B. F. GOODRICH CANADA LIMITED CASE [1969] DECEMBER OLRB REP. 1085). APPLYING THIS FACTOR TO THE INSTANT CASE, WE ACCORDINGLY FIND THAT MISS COTE MADE THE DOLLAR PAYMENT UNDER THE CIRCUMSTANCES AS OUTLINED BY COUGLE.

5. ALTHOUGH THERE ARE ALSO DISCREPANCIES IN THE EVIDENCE OF MRS. DALEY AS COMPARED TO THAT OF COUGLE CONCERNING THE CIRCUMSTANCES SURROUNDING HER PAYMENT (AND INDEED THERE ARE SERIOUS CONFLICTS BETWEEN MRS. DALEY AND MISS COTE, IN THIS REGARD), IT IS NEVERTHELESS CLEAR THAT IN ANY EVENT, ONLY FIFTY CENTS ULTIMATELY REACHED COUGLE. ON THIS POINT COUGLE TESTIFIED THAT HE HAD INTERMINGLED THE MONIES COLLECTED WITH HIS OWN. TO HIM, "THE MONEY ISSUE WAS NOT THAT IMPORTANT" AND IT WOULD APPEAR THAT HE TREATED THE EXTRA FIFTY CENTS AS A LOAN ALTHOUGH HE MADE NO ATTEMPT TO SUBSEQUENTLY COLLECT THIS AMOUNT OF MONEY FROM MRS. DALEY. IN ANY EVENT, HE DID NOT SEE FIT TO REVEAL THIS MATTER TO D'AMOUR UPON TRANSFERRING THE CARDS AND PROCEEDS TO HIM, EVEN THOUGH COUGLE WAS AWARE THAT IT REQUIRED FIFTY CENTS FROM HIS OWN FUNDS IN ORDER TO BALANCE OUT THE PROCEEDS WITH THE CARDS. THERE CAN BE NO QUESTION THAT IN THESE CIRCUMSTANCES MRS. DALEY'S CARD MUST BE DISCOUNTED. HOWEVER, HAVING CAREFULLY ASSESSED THE DEMEANOUR OF COUGLE IN THE WITNESS BOX WE ATTACH NO FRAUDULENT MOTIVES ON HIS PART IN THIS REGARD. HIS COMPLETE IGNORANCE OF THE BOARD'S STANDARDS IN THIS REGARD WE FIND DIRECTLY ATTRIBUTABLE TO D'AMOUR FROM WHOM HE WAS RECEIVING HIS INSTRUCTIONS. WE HAVE ALREADY FOUND THAT D'AMOUR DID NOT RECEIVE PROPER

INSTRUCTIONS IN THE FIRST PLACE FROM GRELLA. THUS, AS BETWEEN D'AMOUR AND COUGLE, WE HAVE A SITUATION WHICH MAY BE DESCRIBED AS A CASE OF THE BLIND LEADING THE BLIND.

6. ON THESE FACTS ALONE, WE WOULD BE HARD-PRESSED TO PLACE ANY RELIANCE UPON THE REMAINING EVIDENCE OF MEMBERSHIP IN WHICH COUGLE ACTED AS THE DE FACTO COLLECTOR. HOWEVER, IN OUR OPINION, THE BOARD NEED NOT DETERMINE THIS ISSUE IN LIGHT OF THE FURTHER EVIDENCE WHICH WAS ADDUCED AT THE HEARING.

7. IN THIS REGARD, D'AMOUR TESTIFIED THAT UPON RECEIVING THE CARDS AND PROCEEDS FROM COUGLE HE TURNED THEM OVER TO GRELLA. GRELLA'S EVIDENCE IS TO THE EFFECT THAT HE QUESTIONED D'AMOUR AS TO WHETHER THE DOLLAR WAS COLLECTED IN EVERY CASE AND WAS TOLD THAT "EVERYBODY PAID A DOLLAR". GRELLA DID CONCEDE, HOWEVER, THAT HE DID NOT SPECIFICALLY ASK D'AMOUR WHETHER HE DID THE ACTUAL COLLECTING OF THE MONIES AS SHOWN ON THE RECEIPT PORTIONS OF THE APPLICATIONS FOR MEMBERSHIP. ACCORDINGLY, THE FORM 8 DECLARATION DOCUMENT EXECUTED BY GRELLA IS NOT CORRECT. IN OUR OPINION, GRELLA IN THESE CIRCUMSTANCES DID NOT MAKE A COMPLETE INQUIRY OF D'AMOUR TO ENSURE THAT THE INFORMATION CONTAINED IN THE FORM 8 DECLARATION WAS ACCURATE. HE WAS WELL AWARE OF D'AMOUR'S INEXPERIENCE IN THESE MATTERS BUT NEVERTHELESS FAILED TO PROPERLY INSTRUCT HIM AT THE OUTSET. WE FURTHER FIND THAT GRELLA EXERCISED LAXITY IN HIS FOLLOW-UP INQUIRIES INTO THE CONDUCT OF THE CAMPAIGN AS A WHOLE AS WELL AS IN RELATION TO THE SPECIFIC MATTERS ATTESTED TO IN HIS FORM 8 DECLARATION.

8. ACCORDINGLY, WE FIND THAT THE EVIDENCE OF MEMBERSHIP IS NOT SUPPORTED BY A RELIABLE FORM 8 DECLARATION DOCUMENT BECAUSE OF THE FAILURE OF GRELLA IN THESE SPECIAL CIRCUMSTANCES TO MAKE A COMPLETE INQUIRY. AS THIS DOCUMENT GOES TO THE VERY ROOT OF THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT, THIS APPLICATION IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: NOVEMBER 9, 1972.

I AGREE WITH THE ULTIMATE DISPOSITION BY MY COLLEAGUES OF THIS CASE WITH THE EXCEPTION THAT BASED UPON THE EVIDENCE ADDUCED FROM THE VARIOUS WITNESSES, AND THEIR DEMEANOUR IN THE WITNESS BOX, I WOULD FIND THAT MISS COTE DID NOT MAKE A \$1.00 PAYMENT ON ACCOUNT OF INITIATION FEES RELATING TO HER APPLICATION FOR MEMBERSHIP.

2552-72-R: FRED WEPPLER, JIM SMITH, BERNARD DAVID STEVENSON, AND LARRY HAMEL (APPLICANTS) v. INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL-CIO-CLC (RESPONDENT) v. SEVEN-UP (ONTARIO) LIMITED (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: FRED WEPPLER, LARRY HAMEL, JIM SMITH AND BERNARD STEVENSON FOR THE APPLICANTS; ELLIOTT G. POSEN AND DAVID A. WAGNER FOR THE RESPONDENT; A. J. CLARK, Q.C., AND P. CAMPBELL FOR THE INTERVENER.

DECISION OF THE BOARD:

NOVEMBER 14, 1972.

1. THE APPLICANTS APPLIED ON SEPTEMBER 12, 1972 FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 49 OF THE LABOUR RELATIONS ACT. AT THE HEARING IN THIS MATTER THE BOARD RAISED THE ISSUE CONCERNING THE TIMELINESS OF THIS APPLICATION IN VIEW OF THE PROVISIONS OF SECTION 44 OF THE ACT.

2. SECTION 44 OF THE ACT READS AS FOLLOWS:

44.-(1) IF A COLLECTIVE AGREEMENT DOES NOT PROVIDE FOR ITS TERM OF OPERATION OR PROVIDES FOR ITS OPERATION FOR AN UNSPECIFIED TERM OR FOR A TERM OF LESS THAN ONE YEAR, IT SHALL BE DEEMED TO PROVIDE FOR ITS OPERATION FOR A TERM OF ONE YEAR FROM THE DATE THAT IT COMMENCED TO OPERATE.

(2) NOTWITHSTANDING SUBSECTION 1, THE PARTIES MAY, BEFORE OR AFTER A COLLECTIVE AGREEMENT HAS CEASED TO OPERATE, AGREE TO CONTINUE ITS OPERATION OR ANY OF ITS PROVISIONS FOR A PERIOD OF LESS THAN ONE YEAR WHILE THEY ARE BARGAINING FOR ITS RENEWAL, WITH OR WITHOUT MODIFICATIONS OR FOR A NEW AGREEMENT, BUT SUCH CONTINUED OPERATION DOES NOT BAR AN APPLICATION FOR CERTIFICATION OR FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.

(3) A COLLECTIVE AGREEMENT SHALL NOT BE TERMINATED BY THE PARTIES BEFORE IT CEASES TO OPERATE IN ACCORDANCE WITH ITS PROVISIONS OR THIS ACT WITHOUT THE CONSENT OF THE BOARD ON THE JOINT APPLICATION OF THE PARTIES.

(4) NOTWITHSTANDING ANYTHING IN THIS SECTION, WHERE AN EMPLOYER JOINS AN EMPLOYERS' ORGANIZATION THAT IS A PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION OR COUNCIL OF TRADE UNIONS AND HE AGREES WITH THE TRADE UNION OR COUNCIL OF TRADE UNIONS TO BE BOUND BY THE COLLECTIVE AGREEMENT BETWEEN THE TRADE UNION OR COUNCIL OF TRADE UNIONS AND THE EMPLOYERS' ORGANIZATION, THE AGREEMENT CEASES TO BE BINDING UPON THE EMPLOYER AND THE TRADE UNION OR COUNCIL OF TRADE UNIONS AT THE SAME TIME AS THE AGREEMENT BETWEEN THE EMPLOYERS' ORGANIZATION AND THE TRADE UNION OR COUNCIL OF TRADE UNIONS CEASES TO BE BINDING.

(5) NOTHING IN THIS SECTION PREVENTS THE REVISION BY MUTUAL CONSENT OF THE PARTIES AT ANY TIME OF ANY PROVISION OF A COLLECTIVE AGREEMENT OTHER THAN A PROVISION RELATING TO ITS TERMS OF OPERATION.

3. AT THE TIME THIS APPLICATION WAS MADE THE RESPONDENT AND THE INTERVENER WERE PARTIES TO A COLLECTIVE AGREEMENT, THE RELEVANT PORTIONS OF WHICH READ AS FOLLOWS:

THIS AGREEMENT MADE AND ENTERED INTO
THIS 24TH DAY OF APRIL, A.F. 1972,

ARTICLE XV - TERMINATION

15.01 THIS AGREEMENT SHALL REMAIN IN FORCE FROM THE DATE HEREOF TO SEPTEMBER 18TH 1972 AND SHALL CONTINUE IN FORCE FROM YEAR TO YEAR THEREAFTER UNLESS IN ANY YEAR NOT MORE THAN SIXTY DAYS, AND NOT LESS THAN THIRTY DAYS, BEFORE THE DATE OF ITS TERMINATION, EITHER PARTY SHALL FURNISH THE OTHER WITH NOTICE OF TERMINATION OF, OR PROPOSED REVISION OF, THIS AGREEMENT.

IN WITNESS WHEREOF EACH OF THE PARTIES
HERETO HAS CAUSED THIS AGREEMENT TO BE SIGNED BY
ITS DULY AUTHORIZED REPRESENTATIVES AS OF THE DAY
AND YEAR FIRST ABOVE WRITTEN.

4. ATTACHED TO THE COLLECTIVE AGREEMENT ARE TWO LETTERS OF INTENT SIGNED BY THE RESPONDENT AND THE INTERVENER WHICH READ AS FOLLOWS:

APRIL 24, 1972

RE: SEVEN-UP (ONTARIO) LIMITED
AND SOFT DRINK WORKERS UNION
- COLLECTIVE AGREEMENT

THIS WILL CONFIRM THE FOLLOWING UNDERSTANDING REACHED BETWEEN US DURING NEGOTIATIONS. DURING THE LIFETIME OF THE COLLECTIVE AGREEMENT DATED APRIL 24, 1972, THE COMPANY DOES NOT EXPECT TO INSTITUTE TELEPHONE SALESGIRLS AT ANY OF THE LOCATIONS COVERED BY THE SAID AGREEMENT AND THE COMPANY HEREBY AGREES THAT IT WILL NOT INSTITUTE TELEPHONE SALESGIRLS BETWEEN THE DATE HEREOF AND SEPTEMBER 18, 1972, WITHOUT THE EXPRESS CONSENT OF THE UNION.

JUNE 6, 1972

RE: SEVEN-UP (ONTARIO) LIMITED
AND SOFT DRINK WORKERS UNION
- COLLECTIVE AGREEMENT

THIS WILL CONFIRM THAT THE RETROACTIVE PAY PROVIDED FOR IN THE MEMORANDUM OF AGREEMENT DATED APRIL 18, 1972, SHALL BE PAID WITHIN ONE WEEK OF THE SIGNING OF THE AGREEMENT BY THE UNION AND SHALL COVER THE PERIOD SEPTEMBER 19TH 1971 TO APRIL 23RD 1972.

5. THE MEMORANDUM OF AGREEMENT REFERRED TO IN THE LETTER OF INTENT DATED JUNE 6, 1972 READS AS FOLLOWS:

MEMORANDUM OF AGREEMENT APRIL 18, 1972

THE PARTIES HEREBY AGREE TO RECOMMEND THE FOLLOWING TO THEIR RESPECTIVE PRINCIPALS AS FULL SETTLEMENT OF ALL MATTERS IN DISPUTE:

THE COLLECTIVE AGREEMENT DATED DECEMBER 1/69 SHALL BE RENEWED FROM THE DATE HEREOF FOR A PERIOD TO EXPIRE SEPTEMBER 18, 1972 SUBJECT ONLY TO THE FOLLOWING CHANGES:

1. ALL THOSE MATTERS SET FORTH IN SCHEDULES A, B, C AND D HERETO.

2. THE BASIC RATES, COMMISSION STRUCTURE, GUARANTEES, DAILY RATES, WEEKLY RATES AND HOURLY RATES SET FORTH ON THE FIRST PAGE OF SCHEDULE D SHALL BE PAID FULLY RETROACTIVE TO SEPTEMBER 19, 1971 FOR ALL EMPLOYEES EMPLOYED BY THE COMPANY AS OF THE DATE OF RATIFICATION OF THIS MEMORANDUM OF AGREEMENT.

THIS MEMORANDUM WAS SIGNED ON BEHALF OF THE UNION AND THE COMPANY AND ATTACHED TO THE MEMORANDUM ARE SCHEDULES WHICH PROVIDE FOR CERTAIN DELETIONS, ADDITIONS AND SUBSTITUTIONS TO PROVISIONS WHICH APPEARED IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES WHICH HAD EXPIRED ON SEPTEMBER 18, 1971.

6. IN VIEW OF THE FACT THAT THE COLLECTIVE AGREEMENT ON ITS FACE STATES THAT IT WAS MADE AND ENTERED INTO ON APRIL 24, 1972 AND SHALL REMAIN IN FORCE FROM THAT DATE TO SEPTEMBER 18, 1972 (WHICH PERIOD OF OPERATION IS LESS THAN ONE YEAR), THE BOARD RAISED THE ISSUE CONCERNING THE TIMELINESS OF THIS APPLICATION ON THE GROUNDS THAT BY OPERATION OF SECTION 44 OF THE ACT IT WOULD APPEAR THAT THE COLLECTIVE AGREEMENT SHALL BE DEEMED TO PROVIDE FOR ITS OPERATION FOR A TERM OF ONE YEAR FROM APRIL 24, 1972, THE DATE THAT THE AGREEMENT COMMENCED TO OPERATE.

7. THE INTERVENER INTRODUCED EVIDENCE, WHICH WAS UNCHALLENGED, THAT ALL PARTIES TREATED THE COLLECTIVE AGREEMENT AS EXPIRING ON SEPTEMBER 18, 1972 AS APPEARS ON THE FACE OF THE AGREEMENT AND FURTHER

TREATED THE COLLECTIVE AGREEMENT AS HAVING COMMENCED TO OPERATE ON SEPTEMBER 19, 1971, WHICH DATE IMMEDIATELY FOLLOWED THE EXPIRATION OF THE PREVIOUS COLLECTIVE AGREEMENT BETWEEN THE PARTIES. THE RESPONDENT GAVE THE INTERVENER NOTICE OF ITS DESIRE TO BARGAIN FOR A RENEWAL OF THE COLLECTIVE AGREEMENT WHICH WAS TO EXPIRE ON SEPTEMBER 18, 1972 AND THE RESPONDENT AND THE INTERVENER MADE ARRANGEMENTS FOR AN INITIAL NEGOTIATION MEETING WHICH WAS TO HAVE BEEN HELD ON SEPTEMBER 28, 1972.

8. THE INTERVENER ARGUED, AND THE OTHER PARTIES JOINED IN THE INTERVENER'S ARGUMENT, THAT THE CONDUCT OF THE PARTIES MADE IT ABUNDANTLY CLEAR THAT THE COLLECTIVE AGREEMENT WHICH EXPIRED ON SEPTEMBER 18, 1972 WAS A CONTINUATION OF THE BARGAINING RELATIONSHIP BETWEEN THE INTERVENER AND THE RESPONDENT AND THAT THE SAID COLLECTIVE AGREEMENT IN FACT COMMENCED TO OPERATE ON SEPTEMBER 19, 1971 AFTER THE EXPIRATION OF THE PREVIOUS COLLECTIVE AGREEMENT. IN SUPPORT OF THE INTERVENER'S SUBMISSIONS, THE RESPONDENT RELIED UPON THE USE OF THE PHRASE CONTAINED IN ARTICLE 15.01 THAT "THIS AGREEMENT SHALL REMAIN IN FORCE FROM THE DATE HEREOF TO SEPTEMBER 18TH 1972 ...". THE INTERVENER ACCORDINGLY ARGUED THAT THE CHOICE OF THE PHRASE REMAIN IN FORCE INDICATES THAT AT THE TIME THE COLLECTIVE AGREEMENT WAS EXECUTED IT WAS IN FACT IN FORCE AND CONTINUED IN FORCE FROM AND AFTER THAT DATE UNTIL SEPTEMBER 18, 1972. THE RESPONDENT FURTHER POINTED OUT THAT IT WAS CLEAR FROM THE LETTER OF INTENT DATED JUNE 6, 1972, WHICH WAS ATTACHED TO THE COLLECTIVE AGREEMENT, THAT IT WAS THE CLEAR INTENTION OF THE PARTIES THAT WAGES WERE TO BE MADE RETROACTIVE AND THAT THE INCREASED WAGES WERE TO BE IN EFFECT FROM SEPTEMBER 1, 1971 TO APRIL 23, 1972, THE PERIOD IMMEDIATELY PRECEDING THE DATE THAT THE COLLECTIVE AGREEMENT WAS ENTERED INTO. THE INTERVENER ACCORDINGLY ARGUED THAT THE OBVIOUS INTENT OF THE MEMORANDUM OF SETTLEMENT AND THE COLLECTIVE AGREEMENT WHICH WAS SUBSEQUENTLY EXECUTED WAS THAT THE COLLECTIVE AGREEMENT WAS TO COMMENCE TO OPERATE ON THE EXPIRY OF THE OLD COLLECTIVE AGREEMENT, I.E. SEPTEMBER 19, 1971.

9. IN SUPPORT OF THE INTERVENER'S POSITION, THE BOARD WAS REFERRED TO THE DECISION OF THE BOARD OF ARBITRATION IN THE RE INT'L CHEMICAL WORKERS, LOCAL 412, AND PENICK CANADA LTD. CASE 17 L.A.C. 296; RE SERVICE EMPLOYEES' UNION, LOCAL 204, AND TORONTO HOSPITAL FOR THE TREATMENT OF TUBERCULOSIS CASE 22 L.A.C. 119; AND JOHN J. DORAN V. WALTER L. MCKINNON (1915-16) 53 S.C.R. 609.

10. HAVING CONSIDERED ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THE COLLECTIVE AGREEMENT IN THIS MATTER CONSISTS OF THE DOCUMENT WHICH WAS MADE AND ENTERED INTO ON THE 24TH DAY OF APRIL, 1972, WHICH DOCUMENT WAS AMENDED BY THE LETTERS OF INTENT DATED APRIL 24, 1972 AND JUNE 6, 1972. WHILE THE BOARD, AS IT HAS SO OFTEN INDICATED, IS PREPARED TO LOOK AT A DOCUMENT OR SERIES OF DOCUMENTS IN ORDER TO DETERMINE WHETHER A COLLECTIVE AGREEMENT EXISTS BETWEEN THE PARTIES WITHIN THE MEANING OF SECTION 1(1)(E) OF THE LABOUR RELATIONS ACT, ANY DOCUMENTS WHICH PRECEDED THE DOCUMENT

WHICH IS DATED APRIL 24, 1972 DO NOT FORM PART OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES. THE MEMORANDUM OF AGREEMENT DATED APRIL 18, 1972 MAY BEST BE DESCRIBED AS AN AGREEMENT TO ENTER INTO A COLLECTIVE AGREEMENT AND DOES NOT OF ITSELF FORM PART OF THE COLLECTIVE AGREEMENT.

11. WHAT THE BOARD IS CONCERNED WITH IN THIS CASE IS NOT THE DATE OF THE EXPIRY OF THE COLLECTIVE AGREEMENT AS THEREIN STATED BUT RATHER THE DATE OF COMMENCEMENT OF THE COLLECTIVE AGREEMENT. THE PARTIES TOOK THE POSITION THAT THE AGREEMENT COMMENCED TO OPERATE ON SEPTEMBER 19, 1971 AND WAS TO RUN FOR THE PERIOD OF ONE YEAR AND WAS TO EXPIRE ON SEPTEMBER 18, 1972. HOWEVER, NOWHERE IN THE COLLECTIVE AGREEMENT DOES THIS INTENTION APPEAR. ON THE CONTRARY, THE COLLECTIVE AGREEMENT SPECIFICALLY STATES THAT THE COLLECTIVE AGREEMENT "SHALL REMAIN IN FORCE FROM THE DATE HEREOF TO SEPTEMBER 18TH 1972 ...". THE DATE OF COMMENCEMENT AS APPEARS ON THE COLLECTIVE AGREEMENT WAS APRIL 24, 1972. THE USE OF THE PHRASE SHALL REMAIN IN FORCE IS SYNONYMOUS WITH THE PHRASE "SHALL BE EFFECTIVE FROM". HAD THE PARTIES INTENDED OTHERWISE, IT WOULD HAVE BEEN A RELATIVELY SIMPLE MATTER FOR THEM TO STATE THAT THIS AGREEMENT SHALL BE DEEMED TO HAVE BEEN IN EFFECT FROM SEPTEMBER 19, 1971 TO SEPTEMBER 18, 1972. THIS, OF COURSE, THE PARTIES DID NOT DO. IN ARGUMENT, THE PARTIES POINTED OUT THAT MANY OF THE PROVISIONS OF THE COLLECTIVE AGREEMENT IN ADDITION TO WAGE RATES WERE CHANGED, INCLUDING PROVISIONS RELATING TO SENIORITY. APPARENTLY, IF THE WHOLE COLLECTIVE AGREEMENT WAS MADE RETROACTIVE TO SEPTEMBER 19, 1971, DIFFICULT PROBLEMS WOULD HAVE BEEN CREATED AS A RESULT OF SUCH TOTAL RETROACTIVITY AND ACCORDINGLY THE PARTIES ONLY MADE PROVISIONS WITH RESPECT TO WAGES RETROACTIVE TO SEPTEMBER 19, 1971. SINCE ONLY THE PROVISIONS RELATING TO WAGES WERE MADE RETROACTIVE, IT THEREFORE FOLLOWS THAT NONE OF THE OTHER PROVISIONS OF THE COLLECTIVE AGREEMENT WERE MADE RETROACTIVE TO SEPTEMBER 19, 1971. IF NONE OF THE OTHER PROVISIONS OF THE COLLECTIVE AGREEMENT WERE MADE RETROACTIVE, IT ACCORDINGLY FOLLOWS THAT THE AGREEMENT AS A WHOLE WAS NOT MADE RETROACTIVE TO SEPTEMBER 19, 1971 BUT COMMENCED TO OPERATE, AS STATED ON THE FACE OF THE AGREEMENT, ON THE DATE THE AGREEMENT WAS ENTERED INTO, I.E. APRIL 24, 1972.

12. THE PROVISIONS OF SECTION 44 OF THE ACT MAKES IT MANDATORY THAT A COLLECTIVE AGREEMENT BE FOR A TERM OF OPERATION OF NOT LESS THAN ONE YEAR FROM THE DATE THAT IT COMMENCED TO OPERATE. THIS PROVISION IS NOT NECESSARILY FOR THE BENEFIT OF THE PARTIES TO THE COLLECTIVE AGREEMENT BUT IS FOR THE BENEFIT OF THIRD PARTIES AND FOR THE PUBLIC AT LARGE. THIRD PARTIES OUGHT TO BE ABLE TO LOOK AT THE PROVISIONS OF A COLLECTIVE AGREEMENT AND DETERMINE, SUBJECT TO THE PROVISIONS OF THE LABOUR RELATIONS ACT, THE DATE THAT THE AGREEMENT CEASES TO OPERATE. WHILE PARTIES TO A COLLECTIVE AGREEMENT MAY AGREE TO AMEND MOST OF THE PROVISIONS OF THEIR AGREEMENT DURING ITS TERM OF OPERATION, SECTION 44 PREVENTS THE PARTIES FROM ALTERING PROVISIONS RELATING TO THE TERM OF OPERATION OF THE COLLECTIVE AGREEMENT.

13. ON THE FACE OF THE DOCUMENT BEFORE US WE FIND THAT THE CLEAR

AND UNEQUIVOCAL INTENT OF THE PARTIES IS THAT THE AGREEMENT WAS TO RUN FOR A PERIOD BETWEEN AND INCLUDING APRIL 24, 1972 TO AND INCLUDING SEPTEMBER 18, 1972. SINCE SUCH PERIOD IS LESS THAN ONE YEAR, THE PROVISIONS OF SECTION 44(1) OF THE ACT MUST BE GIVEN EFFECT AND THE COLLECTIVE AGREEMENT MUST THEREFORE BE DEEMED TO PROVIDE FOR ITS OPERATION FOR A TERM OF ONE YEAR FROM APRIL 24, 1972 AND WOULD THEREFORE EXPIRE ON APRIL 23, 1973.

14. THE USE OF THE PHRASE "SHALL REMAIN IN FORCE FROM THE DATE HEREOF" DOES NOT CAUSE THE AGREEMENT TO RELATE BACK TO A PRIOR UNCERTAIN DATE BUT IS THE CLEAR INTENT OF THE PARTIES THAT IT SHALL COMMENCE TO OPERATE ON THE DATE HEREOF, I.E. APRIL 24, 1972 AND SHALL REMAIN IN FORCE OR CONTINUE TO OPERATE FROM THAT DATE TO SEPTEMBER 18, 1972.

15. THERE WAS NOTHING TO PREVENT THE PARTIES FROM PROVIDING IN THE COLLECTIVE AGREEMENT THAT ALL THE PROVISIONS OF THE COLLECTIVE AGREEMENT WERE TO BE EFFECTIVE FROM SEPTEMBER 19, 1971 WITH CERTAIN EXCEPTIONS SUCH AS AMENDED SENIORITY PROVISIONS, WHICH PROVISIONS MIGHT HAVE BEEN MADE EFFECTIVE AS OF THE DATE THE COLLECTIVE AGREEMENT WAS ENTERED INTO. HOWEVER, THIS IS NOT THE TACTIC ADOPTED BY THE PARTIES IN THIS CASE. THE PARTIES CHOSE TO MAKE THE COLLECTIVE AGREEMENT EFFECTIVE FROM THE DATE IT WAS ENTERED INTO AND THEY PROVIDED IN A SEPARATE DOCUMENT THAT WAGES ONLY BE MADE RETROACTIVE TO SEPTEMBER 19, 1971. IF THE COLLECTIVE AGREEMENT AS A WHOLE WAS MADE RETROACTIVE, THE SEPARATE PROVISIONS FOR RETROACTIVE WAGES WOULD HAVE BEEN QUITE UNNECESSARY AND WOULD HAVE BEEN REDUNDANT. THE FACT THAT A SEPARATE AGREEMENT IS REQUIRED DEALING WITH RETROACTIVE WAGES SUPPORTS OUR FINDING THAT THE COLLECTIVE AGREEMENT AS A WHOLE WAS NOT MADE RETROACTIVE TO SEPTEMBER 19, 1971, AS SUGGESTED BY THE PARTIES.

16. IN ADDITION TO THE ABOVE, THE TERMINOLOGY USED BY THE PARTIES IN THEIR LETTER OF INTENT DATED APRIL 24, 1972 CLEARLY INDICATES THAT THEY CONSIDERED THAT THE "LIFETIME OF THE COLLECTIVE AGREEMENT DATED APRIL 24, 1972" WOULD BE BETWEEN THAT DATE AND SEPTEMBER 18, 1972.

17. BECAUSE OF THE CLEAR AND UNAMBIGUOUS LANGUAGE USED IN THE COLLECTIVE AGREEMENT WITH RESPECT TO ITS TERM OF OPERATION, THE MEMORANDUM OF AGREEMENT WHICH PRECEDED IT IS NOT RELEVANT EVIDENCE CONCERNING THE TERM OF OPERATION OF THE COLLECTIVE AGREEMENT. IT IS NOTED, HOWEVER, THAT THE MEMORANDUM PROVIDES THAT THE COLLECTIVE AGREEMENT "SHALL BE RENEWED FROM THE DATE HEREOF" I.E. APRIL 18, 1972 AND NOWHERE SUGGESTED THAT IT BE RENEWED AS OF SEPTEMBER 19, 1971.

18. IT WAS SUGGESTED THAT HAD THE PARTIES MADE ALL OF THE PROVISIONS OF THE COLLECTIVE AGREEMENT RETROACTIVE AND IF THERE HAD BEEN A LAWFUL STRIKE LEADING TO THE EXECUTION OF THE COLLECTIVE AGREEMENT, SUCH RETROACTIVITY MIGHT MAKE THE LAWFUL STRIKE UNLAWFUL SINCE THERE WOULD HAVE BEEN A BINDING COLLECTIVE AGREEMENT BETWEEN THE PARTIES DURING THE PERIOD OF THE STRIKE AS A RESULT OF THE RETROACTIVITY. THIS OUGHT NOT BE A CONCERN. AS STATED IN THE AWARD OF MR. WEATHERILL IN THE PENICK CANADA LTD. CASE, REFERRED TO ABOVE, IN THE ABSENCE OF THE

CLEAREST POSSIBLE LANGUAGE TO THE CONTRARY, THINGS WHICH ARE DONE DURING THE PERIOD WHEN NO COLLECTIVE AGREEMENT WAS IN OPERATION ARE NOT RENDERED UNLAWFUL OR IMPROPER IF A COLLECTIVE AGREEMENT IS SUBSEQUENTLY EXECUTED WHICH CONTAINS A PROVISION MAKING THE WHOLE COLLECTIVE AGREEMENT RETRO-ACTIVE TO THE DATE THAT THE FORMER COLLECTIVE AGREEMENT CEASED TO OPERATE.

19. FOR THE REASONS SET OUT ABOVE, WE FIND THAT BY VIRTUE OF THE PROVISIONS OF SECTION 44 OF THE ACT THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES SHALL BE DEEMED TO CONTINUE TO OPERATE UNTIL APRIL 23, 1973 AND ACCORDINGLY THE APPLICATION IS UNTIMELY PURSUANT TO THE PROVISIONS OF SECTION 49 AND SECTION 53 OF THE ACT. THE APPLICATION IS THEREFORE DISMISSED.

2720-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. PORT COLBORNE BLOCK LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: LORNE INGLE AND MAURICE KECK FOR THE APPLICANT; ROBERT A. MACDERMID FOR THE RESPONDENT; T. RUITER, J. LOEFFEN AND D. MORIN FOR THE OBJECTORS.

DECISION OF THE BOARD: NOVEMBER 16, 1972.

. . .

2. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THERE WAS FILED A STATEMENT OF OBJECTION OR PETITION IN OPPOSITION TO THE APPLICATION. THE BOARD INQUIRED INTO THE ORIGINATION AND CIRCULATION OF THE PETITION AND THE MANNER IN WHICH THE SIGNATURES THERETO WERE OBTAINED.

3. THE APPLICATION FOR CERTIFICATION WAS FILED ON OCTOBER 19, 1972. ON THURSDAY, OCTOBER 26, 1972, A MEETING WAS CALLED BY THE COMPANY ON THE COMPANY PREMISES. THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS MADE UP OF A NUMBER OF TRUCK DRIVERS, A MECHANIC AND VARIOUS LABOURERS WHO WORK IN THE PLANT. WITH ONE EXCEPTION, THE MEETING OF OCTOBER 26TH WAS ATTENDED BY THE TRUCK DRIVERS. THE ONE EXCEPTION WAS MR. J. LOEFFEN, A LABOURER IN THE SHIPPING DEPARTMENT, WHO TESTIFIED IN SUPPORT OF THE PETITION.

4. THE MEETING HAD TO DO WITH THE APPLICATION OF THE UNION FOR CERTIFICATION. THE EMPLOYEES WERE ASKED THE REASON WHY THEY WANTED A UNION, AND THEIR ANSWER WAS THAT THE MAIN REASON WAS JOB SECURITY. THE EMPLOYEES WERE THEN TOLD BY AN OFFICIAL OF THE COMPANY THAT IF THE UNION CAME IN, THE COMPANY MIGHT HAVE TO SELL THE TRUCKS AND "THEN WHERE WOULD THEIR JOB SECURITY?" IT WAS INDICATED TO THE EMPLOYEES THAT THE WHOLE QUESTION OF THE UNION COMING IN WAS ONE OF COST.

5. UNION TESTIMONY WAS THAT A SUGGESTION WAS MADE BY THE COMPANY THAT IT WOULD BE POSSIBLE TO SET UP SOMETHING IN THE NATURE OF A PROFIT SHARING SCHEME IF THE UNION WERE NOT CERTIFIED. THE EMPLOYEES WERE TOLD THAT ALL THEY HAD TO DO WAS PUT THEIR NAMES ON A PIECE OF PAPER FOR A PETITION AGAINST THE UNION. THEY WERE ADVISED THAT THIS SHOULD BE DONE AS SOON AS POSSIBLE SO THAT THE PETITION COULD BE MAILED BY THE FOLLOWING SATURDAY. LOEFFEN, WHO WAS NOT PRESENT THROUGHOUT THE ENTIRE MEETING, NEVERTHELESS CONFIRMED THE FOREGOING.

6. A QUESTION WAS RAISED AT THE MEETING AS TO WHETHER PERSONS WHO HAD SIGNED UNION MEMBERSHIP CARDS COULD ALSO SIGN THE PETITION. THE REPLY GIVEN BY THE COMPANY WAS THAT THIS COULD BE DONE. A FURTHER QUESTION WAS ASKED AS TO WHAT MIGHT HAPPEN TO PEOPLE WHO HAD STARTED THE UNION IF THE UNION WERE TO BE VOTED OUT. THE COMPANY'S ANSWER WAS THAT NOTHING WOULD HAPPEN TO SUCH PEOPLE.

7. THERE IS NO DOUBT WHATSOEVER UPON THE EVIDENCE THAT THE MEETING OF OCTOBER 26, 1972 LEAD DIRECTLY TO A GENERAL WEAKENING OF SUPPORT FOR THE APPLICANT UNION. THERE CAN ALSO BE NO DOUBT THAT THE MEETING WAS THE INSPIRATION OF AND CLEARLY THE SOURCE FROM WHICH THE PETITION ORIGINATED.

8. IN VIEW OF THE FACT THAT THE ORIGINATION OF THE PETITION IS DIRECTLY ATTRIBUTABLE TO THE ACTIONS OF MANAGEMENT, THE BOARD FINDS THAT THE PETITION DOES NOT WEAKEN THE EVIDENCE OF MEMBERSHIP FILED BY THE UNION IN SUPPORT OF THE APPLICATION SO AS TO REQUIRE THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

9. THE BOARD, IN REACHING ITS DECISION WITH RESPECT TO THE EFFECT TO BE GIVEN TO THE PETITION, DID NOT OVERLOOK THE EVIDENCE GIVEN ON BEHALF OF THE COMPANY INDICATING THAT PRIOR TO THE DATE OF THE NOTICE OF THE APPLICATION FOR CERTIFICATION THE COMPANY HAD REACHED AN AGREEMENT WITH REPRESENTATIVES OF ITS EMPLOYEES TO INCREASE THE RATES BY 35¢ PER HOUR. THE EMPLOYEE COMMITTEE WAS COMPOSED OF JOHN LOEFFEN AND ALEX GELKA. THE LATTER WAS CHIEF PROTAGONIST FOR THE UNION AND HAD ASSURED THE EMPLOYER THAT AS FAR AS HE KNEW, THE EMPLOYEES WOULD STICK TO THE AGREEMENT. THE INCREASE WAS PUT INTO EFFECT BY THE COMPANY.

10. SHORTLY THEREAFTER THE NOTICE OF APPLICATION FOR CERTIFICATION WAS RECEIVED. WHILE THIS EVIDENCE MAY EXPLAIN SOME OF THE ACTIONS TAKEN BY THE COMPANY, IT CANNOT EXCUSE ITS DIRECT INTERFERENCE WITH THE EMPLOYEES' ORGANIZATIONAL ACTIVITIES NOR VALIDATE THE PETITION WHICH AROSE BECAUSE OF SUCH INTERFERENCE.

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2634-72-R: LOCAL UNION 2557 - UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. PINECREST PRODUCTS LIMITED AND FURNITEX CORPORATION LIMITED (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: JERRY J. BERRIAULT FOR THE APPLICANT; JOHN M. GAMMELL AND GUNTER FREUND FOR THE RESPONDENTS.

DECISION OF THE BOARD: NOVEMBER 16, 1972.

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2. THIS IS AN APPLICATION UNDER SECTION 55 OF THE LABOUR RELATIONS ACT.

3. BY A CERTIFICATE OF THE BOARD DATED JUNE 28, 1972, THE APPLICANT ACQUIRED THE BARGAINING RIGHTS FOR A UNIT COMPOSED OF ALL EMPLOYEES OF PINECREST PRODUCTS LIMITED (HEREINAFTER REFERRED TO AS "PINECREST") AT MIDLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

4. ON JULY 10, 1972 THE APPLICANT SERVED NOTICE ON PINECREST OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT. THE PARTIES MET AND BARGAINED BUT DID NOT ENTER INTO A COLLECTIVE AGREEMENT.

5. THERE IS NO DISPUTE BETWEEN THE PARTIES THAT IN THE EARLY FALL OF THIS YEAR PINECREST SOLD ITS FURNITURE MANUFACTURING OPERATIONS TO FURNITEX CORPORATION LIMITED (HEREINAFTER REFERRED TO AS "FURNITEX") AND THAT THE TRANSACTION CONSTITUTED THE SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 55 OF THE ACT. PRIOR TO THE SALE, PINECREST CARRIED ON ITS FURNITURE MANUFACTURING OPERATIONS AT 21 CENTRE STREET IN MIDLAND AND FURNITEX HAS CONTINUED THESE OPERATIONS AT THE SAME LOCATION LARGELY EMPLOYING THE FORMER EMPLOYEES OF PINECREST. FURNITEX, BOTH PRIOR TO AND SINCE THE SALE, CARRIES ON A FURNITURE MANUFACTURING OPERATION AT 41 CENTRE STREET IN MIDLAND. NO OUTSTANDING BARGAINING RIGHTS ARE HELD FOR ITS EMPLOYEES AT THIS LOCATION. AS OF THE DATE OF THE MAKING OF THE INSTANT APPLICATION, FURNITEX EMPLOYED APPROXIMATELY 25 EMPLOYEES AT 21 CENTRE STREET AND SOME 18 EMPLOYEES AT 41 CENTRE STREET. SINCE THE DATE OF THE SALE FURNITEX HAS PERMANENTLY TRANSFERRED ONE EMPLOYEE FROM ITS 21 CENTRE STREET OPERATION TO ITS 41 CENTRE STREET OPERATION. ALSO DURING THAT PERIOD, ON TWO OR THREE OCCASIONS, DUE TO ABSENCES, FURNITEX HAS TEMPORARILY TRANSFERRED EMPLOYEES FROM ONE LOCATION TO THE OTHER.

6. SUBSECTION (3) OF SECTION 55 READS:

(3) WHERE AN EMPLOYER ON BEHALF OF WHOSE EMPLOYEES A TRADE UNION OR COUNCIL OF TRADE UNIONS, AS THE CASE MAY BE, HAS BEEN CERTIFIED AS BARGAINING AGENT OR HAS GIVEN OR IS ENTITLED TO GIVE NOTICE UNDER SECTION 13, SELLS HIS BUSINESS, THE TRADE UNION OR COUNCIL OF TRADE UNIONS

CONTINUES, UNTIL THE BOARD OTHERWISE DECLARES, TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE PERSON TO WHOM THE BUSINESS WAS SOLD IN THE LIKE BARGAINING UNIT IN THAT BUSINESS, AND THE TRADE UNION OR COUNCIL OF TRADE UNIONS IS ENTITLED TO GIVE TO THE PERSON TO WHOM THE BUSINESS WAS SOLD A WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT AND SUCH NOTICE HAS THE SAME EFFECT AS A NOTICE UNDER SECTION 13.

7. HAVING REGARD TO THE PROVISIONS OF THE ABOVE SUBSECTION, THE APPLICANT CONTINUED TO HOLD THE BARGAINING RIGHTS FOR THE EMPLOYEES OF FURNITEX IN THE LIKE BARGAINING UNIT FOR WHICH IT HELD THE BARGAINING RIGHTS FOR EMPLOYEES OF PINECREST. THE BOARD FINDS THAT THE EMPLOYEES OF FURNITEX AT ITS 21 CENTRE STREET LOCATION CONSTITUTE THE "LIKE BARGAINING UNIT" (SEE THE BRYANT PRESS LIMITED CASE [1972] OLRB REP. 301).

8. SUBSECTION (6) OF SECTION 55 READS:

(6) NOTWITHSTANDING SUBSECTIONS 2 AND 3, WHERE A BUSINESS WAS SOLD TO A PERSON WHO CARRIES ON ONE OR MORE OTHER BUSINESSES AND A TRADE UNION OR COUNCIL OF TRADE UNIONS IS THE BARGAINING AGENT OF THE EMPLOYEES IN ANY OF THE BUSINESSES AND SUCH PERSON INTERMINGLES THE EMPLOYEES OF ONE OF THE BUSINESSES WITH THOSE OF ANOTHER OF THE BUSINESSES, THE BOARD MAY, UPON THE APPLICATION OF ANY PERSON, TRADE UNION OR COUNCIL OF TRADE UNIONS CONCERNED,

- (A) DECLARE THAT THE PERSON TO WHOM THE BUSINESS WAS SOLD IS NO LONGER BOUND BY THE COLLECTIVE AGREEMENT REFERRED TO IN SUBSECTION 2;
- (B) DETERMINE WHETHER THE EMPLOYEES CONCERNED CONSTITUTE ONE OR MORE APPROPRIATE BARGAINING UNITS;
- (C) DECLARE WHICH TRADE UNION, TRADE UNIONS OR COUNCIL OF TRADE UNIONS, IF ANY, SHALL BE THE BARGAINING AGENT OR AGENTS FOR THE EMPLOYEES IN SUCH UNIT OR UNITS; AND
- (D) AMEND, TO SUCH EXTENT AS THE BOARD CONSIDERS NECESSARY, ANY CERTIFICATE ISSUED TO ANY TRADE UNION OR COUNCIL OF TRADE UNIONS OR ANY BARGAINING UNIT DEFINED IN ANY COLLECTIVE AGREEMENT.

9. BASED ON THE EVIDENCE, THE BOARD FINDS THAT THERE HAS BEEN AN INTERMINGLING OF THE EMPLOYEES OF THE BUSINESSES CARRIED ON BY FUR-

NITEX AT ITS TWO LOCATIONS IN MIDLAND. ACCORDINGLY, PURSUANT TO SUBSECTION (6), THE BOARD DECLARES THAT THE EMPLOYEES CONCERNED CONSTITUTE ONE APPROPRIATE BARGAINING UNIT COMPOSED OF THE EMPLOYEES OF FURNITEX AT BOTH 21 CENTRE STREET AND 41 CENTRE STREET IN MIDLAND. FURTHER, THE BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES, PURSUANT TO SUBSECTION (8) OF SECTION 55, TO DIRECT THE TAKING OF A REPRESENTATION VOTE.

10. ACCORDINGLY, A REPRESENTATION VOTE WILL BE TAKEN OF ALL THE EMPLOYEES OF FURNITEX CORPORATION LIMITED AT MIDLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

11. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH FURNITEX CORPORATION LIMITED.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

22-72-PH: CANADIAN UNION GENERAL EMPLOYEES (APPLICANT) v. HORACE BROWN (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: PATRICK MURPHY FOR THE APPLICANT; R. B. POTTER AND D. S. AFFLECK FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER J.E.C. ROBINSON, Q.C.: NOVEMBER 22, 1972.

1. THE APPLICANT APPLIED ON OCTOBER 6, 1972 FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT WHEREIN THE APPLICANT HAS ALLEGED THAT THE RESPONDENT IS A MEMBER OF THE BOARD OF TRUSTEES AND THEREFORE AN OFFICER OR AGENT OF TORONTO WESTERN HOSPITAL. THE APPLICANT HAS FURTHER ALLEGED THAT THE RESPONDENT AS AN OFFICER OR AGENT OF THE HOSPITAL HAS REFUSED TO MEET FORTHWITH AND BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT WITH THE APPLICANT CONTRARY TO SECTION 3 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, 1965, (HEREINAFTER REFERRED TO AS "THE HOSPITAL ACT"). ITEMS 3 AND 4 OF THE APPLICATION READ AS FOLLOWS:

3. THE DATE OF COMMENCEMENT OF THE ALLEGED OFFENCE:

JULY 15TH TO JULY 31ST. 1972.

4. THE MATERIAL FACTS UPON WHICH THE APPLICANT INTENDS TO RELY AS ESTABLISHING THE OFFENCES ARE AS FOLLOWS:

1. THE RESPONDENT IS A MEMBER OF THE BOARD OF TRUSTEES OF THE TORONTO WESTERN HOSPITAL AND AS SUCH PERSISTENTLY REFUSED AND INSTRUCTED J.B. McAULAY, EXECUTIVE DIRECTOR OF THE TORONTO WESTERN HOSPITAL TO REFUSE TO MEET FORTHWITH AND TO BARGAIN IN GOOD FAITH AND TO MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT.

2. ON THE 13TH DAY OF JULY 1972 THE MINISTER OF LABOUR FOR ONTARIO DID NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD. NOTICE OF SUCH DECISION CAME TO THE ATTENTION OF THE RESPONDENT ON THE 15TH DAY OF JULY 1972.

2. THE APPLICANT RELIED ON THE PROVISIONS OF SECTION 87 OF THE LABOUR RELATIONS ACT IN SUPPORT OF ITS APPLICATION. SECTION 87 READS AS FOLLOWS:

87. IF A CORPORATION, TRADE UNION, COUNCIL OF TRADE UNIONS OR EMPLOYERS' ORGANIZATION IS GUILTY OF AN OFFENCE UNDER THIS ACT, EVERY OFFICER, OFFICIAL OR AGENT THEREOF WHO ASSENTED TO THE COMMISSION OF THE OFFENCE SHALL BE DEEMED TO BE A PARTY TO AND GUILTY OF THE OFFENCE.

3. THE PARTIES AGREED THAT THE RESPONDENT HAD NOT MET WITH THE APPLICANT AND DID NOT PARTICIPATE IN ANY OF THE BARGAINING WHICH TOOK PLACE BETWEEN THE APPLICANT AND TORONTO WESTERN HOSPITAL, WHICH WAS REPRESENTED BY J. B. McAULAY, THE EXECUTIVE DIRECTOR OF THE HOSPITAL.

4. AT THE HEARING THE BOARD INVITED THE APPLICANT TO ARGUE WHY THE BOARD SHOULD ISSUE THE CONSENT REQUESTED BY THE APPLICANT IN THIS CASE IN VIEW OF THE BOARD'S DECISION DATED OCTOBER 10, 1972 IN AN APPLICATION BY THE APPLICANT FOR A CONSENT TO PROSECUTE TORONTO WESTERN HOSPITAL FOR AN ALLEGED VIOLATION OF SECTION 3 OF THE HOSPITAL ACT (BOARD FILE 19-72-PH). IN THAT CASE, THE BOARD REFUSED TO FIND THAT TORONTO WESTERN HOSPITAL VIOLATED THE PROVISIONS OF SECTION 3 OF THE HOSPITAL ACT AND ACCORDINGLY REFUSED TO ISSUE ITS CONSENT TO PROSECUTE THE HOSPITAL.

5. THE BOARD IN THE INSTANT CASE REQUESTED THE PARTIES TO BASE THEIR ARGUMENT ON THE ASSUMPTION THAT THE APPLICANT HAD PROVED THAT THE RESPONDENT WAS AN OFFICER OR AGENT OF TORONTO WESTERN HOSPITAL AND THAT THE RESPONDENT, ALONG WITH THE OTHER HOSPITAL TRUSTEES, HAD SPECIFICALLY INSTRUCTED J. B. McAULAY TO TAKE THE POSITION ADOPTED BY HIM DURING THE COURSE OF BARGAINING BETWEEN THE APPLICANT AND TORONTO WESTERN HOSPITAL.

6. THE APPLICANT INSISTED THAT IT HAD THE RIGHT TO CALL EVIDENCE CONCERNING THE FACT THAT THE RESPONDENT WAS AN OFFICER OR AGENT OF

TORONTO WESTERN HOSPITAL AND THAT THE RESPONDENT HAD INSTRUCTED MR. McAULAY AS ALLEGED IN ITS APPLICATION. IT WAS THE APPLICANT'S POSITION THAT THE BOARD SHOULD NOT REQUEST THAT THE PARTIES BASE THEIR ARGUMENT ON THE ASSUMPTION THAT THE ABOVE EVIDENCE HAD BEEN CALLED. THE APPLICANT ALSO ALLEGED THAT NEW EVIDENCE WAS NOW AVAILABLE THAT WAS NOT AVAILABLE TO THE APPLICANT WHEN THE BOARD HEARD THE APPLICATION IN BOARD FILE 19-72-PH. AFTER REPEATED REQUESTS BY THE BOARD, THE APPLICANT OUTLINED THE NATURE OF THE "NEW EVIDENCE" IT WISHES TO CALL.

7. SINCE THE "NEW EVIDENCE" THAT THE APPLICANT WISHED TO CALL WAS EVIDENCE WHICH WAS INTENDED BY THE APPLICANT TO CHALLENGE THE CORRECTNESS OF THE DECISION OF THE BOARD IN BOARD FILE 19-72-PH, THE BOARD ADVISED THE APPLICANT THAT IT WAS NOT PREPARED TO ENTERTAIN SUCH EVIDENCE IN THE INSTANT CASE. IT WAS THE BOARD'S POSITION THAT ONE DIVISION OF THE BOARD OUGHT NOT TO SIT AS AN APPELLATE TRIBUNAL OVER ANOTHER DIVISION OF THE BOARD AS THE APPLICANT REQUESTED THIS DIVISION OF THE BOARD TO DO. THE BOARD ALSO INFORMED THE APPLICANT THAT SOME, IF NOT ALL, OF THE "NEW EVIDENCE" WAS EITHER AVAILABLE TO THE APPLICANT OR WOULD HAVE BEEN AVAILABLE TO THE APPLICANT AT THE HEARING IN BOARD FILE 19-72-PH HAD THE APPLICANT ATTEMPTED, WITH REASONABLE DILIGENCE, TO SECURE THE ATTENDANCE OF THE WITNESS WHOM IT NOW SEEKS TO CALL. IN ANY EVENT, THE APPLICANT WAS ADVISED THAT IF THE APPLICANT SEEKS TO CHALLENGE THE BOARD'S DECISION IN BOARD FILE 19-72-PH IT SHOULD NOT ATTEMPT TO DO SO BEFORE THIS DIVISION OF THE BOARD BUT, PURSUANT TO THE PROVISIONS OF SECTION 95(1) OF THE LABOUR RELATIONS ACT, SHOULD REQUEST THE DIVISION OF THE BOARD THAT MADE THE DECISION TO RECONSIDER ITS DECISION IF PROPER GROUNDS ARE AVAILABLE TO THE APPLICANT. THE BOARD ACCORDINGLY ADVISED THE PARTIES THAT UNTIL SUCH TIME AS THE BOARD'S DECISION REFERRED TO ABOVE IS VARIED OR REVOKED, THE PARTIES AND THIS DIVISION OF THE BOARD ARE BOUND BY THAT DECISION AS IT APPLIES TO THE PARTIES IN THIS CASE SINCE THE RESPONDENT IS ALLEGED TO BE A PRIVY OF TORONTO WESTERN HOSPITAL.

8. SINCE THE BOARD WAS PREPARED TO ASSUME THAT ALL THE RELEVANT EVIDENCE ALLEGED BY THE APPLICANT WAS PROPERLY BEFORE THE BOARD FOR THE PURPOSES OF ARGUMENT, THE APPLICANT WAS ACCORDINGLY DIRECTED TO ARGUE WHY THE BOARD SHOULD ISSUE ITS CONSENT IN THIS MATTER IN VIEW OF THE BOARD'S DECISION IN BOARD FILE 19-72-PH.

9. PRIOR TO HEARING THE APPLICANT'S ARGUMENT, THE RESPONDENT RAISED TWO PRELIMINARY OBJECTIONS TO THE RELIEF SOUGHT BY THE APPLICANT WHICH, TO A LARGE EXTENT, WERE EMBODIED IN THE ISSUE RAISED BY THE BOARD. THE RESPONDENT REFERRED THE BOARD TO THE FACTS WHICH WERE NOT IN DISPUTE AND THE FACTS AS RECORDED IN THE DECISIONS OF THE BOARD ALREADY ISSUED IN APPLICATIONS INVOLVING THE APPLICANT, ITS MEMBERS AND OFFICIALS AND TORONTO WESTERN HOSPITAL AND ITS OFFICIALS. IT WAS POINTED OUT THAT THE INSTANT APPLICATION IS ONE OF THIRTY-NINE APPLICATIONS WHICH HAVE BEEN SPAWNED BY A STRIKE ENGAGED IN BY CERTAIN EMPLOYEES OF TORONTO WESTERN HOSPITAL REPRESENTED BY THE APPLICANT WHICH

THE BOARD DECLARED WAS AN UNLAWFUL STRIKE IN ITS DECISION IN BOARD FILE 2262-72-U.

10. HAVING CONSIDERED ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE APPLICANT HAS NOT ESTABLISHED THAT IT IS ENTITLED TO THE RELIEF CLAIMED BY IT IN THIS CASE. EVEN IF THE RESPONDENT IS AN OFFICER OR AGENT OF TORONTO WESTERN HOSPITAL AS ALLEGED, THE RESPONDENT IS NOT ONE OF THE "PARTIES" REFERRED TO IN SECTION 3 OF THE HOSPITAL ACT. ONLY TORONTO WESTERN HOSPITAL AND THE UNION ARE PARTIES WITHIN THE MEANING OF SECTION 3. ACCORDINGLY, THE APPLICANT'S RIGHT TO SUCCEED IN THE INSTANT APPLICATION IS BASED ON THE PROVISIONS OF SECTION 87 OF THE LABOUR RELATIONS ACT (WHICH ARE APPLICABLE BY OPERATION OF SECTION 11 OF THE HOSPITAL ACT). THE APPLICANT'S RIGHT TO SUCCEED IS THEREFORE PREDICATED ON TORONTO WESTERN HOSPITAL BEING "GUILTY OF AN OFFENCE" UNDER THE ACT.

11. IN BOARD FILE 19-72-PH, THE BOARD, AS THEREIN CONSTITUTED, REFUSED TO FIND THAT TORONTO WESTERN HOSPITAL ACTED CONTRARY TO THE PROVISIONS OF SECTION 3 OF THE HOSPITAL ACT AND ACCORDINGLY REFUSED TO GRANT CONSENT TO PROSECUTE. WE THEREFORE FIND THAT THE DOCTRINE OF RES JUDICATA APPLIES WITH RESPECT TO THE ISSUE CONCERNING THE ALLEGED VIOLATION BY TORONTO WESTERN HOSPITAL OF THE PROVISIONS OF SECTION 3 OF THE HOSPITAL ACT. SINCE THIS MATTER HAS ALREADY BEEN ADJUDICATED AND THE DECISION REFERRED TO ABOVE IS BINDING UPON THE APPLICANT AND TORONTO WESTERN HOSPITAL AND ITS PRIVIES, THIS BOARD IS BOUND BY THAT DECISION IN THE INSTANT PROCEEDINGS.

12. WE THEREFORE FIND THAT EVEN IF THE RESPONDENT ASSENTED TO THE ACTIONS OF TORONTO WESTERN HOSPITAL AS CONTEMPLATED BY SECTION 87 OF THE LABOUR RELATIONS ACT, THE APPLICANT HAS FAILED TO ESTABLISH THAT WHAT WAS DONE BY TORONTO WESTERN HOSPITAL WAS AN OFFENCE UNDER SECTION 3 OF THE HOSPITAL ACT AND ACCORDINGLY NO OFFENCE CAN BE IMPOSED TO OR DEEMED TO HAVE BEEN COMMITTED BY THE RESPONDENT IN THESE CIRCUMSTANCES.

13. THIS APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER O. J. HODGES: NOVEMBER 22, 1972.

1. I CONCUR.

2. MY COLLEAGUES IN THIS MATTER REFER TO THE DECISION IN BOARD FILE NO. 19-72-PH, CANADIAN UNION OF GENERAL EMPLOYEES AND TORONTO WESTERN HOSPITAL, MR. RORY F. EGAN CHAIRMAN, DECISION DATED OCTOBER 10, 1972. IN THAT MATTER, THE APPLICANT UNION FAILED TO SECURE THE APPROVAL OF THE BOARD TO ALLOW THE COURTS TO CONSIDER AND DECIDE WHETHER THE HOSPITAL HAD FAILED TO "MEET AND BARGAIN IN GOOD FAITH" AS REQUIRED BY SECTION 3 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT.

3. THE REASON FOR THE REFUSAL OF THE MAJORITY IN BOARD FILE NO.

19-72-PH TO GRANT CONSENT TO THE UNION TO TAKE ITS ALLEGATION AGAINST THE HOSPITAL ON TO THE COURTS IS GIVEN IN PARAGRAPH 29 OF THAT DECISION, AS FOLLOWS:

29. IN ADDITION, THE BOARD IS PERSUADED ON LOOKING AT THE SITUATION AS A WHOLE THAT NOTHING WHICH MIGHT IN ANY WAY CONTRIBUTE TO THE RESTORATION OF A PROPER RELATIONSHIP BETWEEN THE PARTIES OR WHICH WOULD TEND TO ENCOURAGE THE PRACTICE AND PROCEDURES OF ORDERLY COLLECTIVE BARGAINING AS REQUIRED BY THE LAW COULD RESULT FROM A PROSECUTION WHETHER THE SAME WERE TO BE SUCCESSFUL OR NOT. ON THE CONTRARY, IT WOULD APPEAR THAT TO GRANT CONSENT WOULD ONLY BE TO PROVIDE ANOTHER PROSTRUM AND ANOTHER ARENA FOR THE PROLONGATION OF THE WHOLE DISPUTE.

(UNDERLINING MINE)

PARAGRAPH 30 OF THAT DECISION THEN CONTINUES:

30. THE BOARD, THEREFORE, IN THE EXERCISE OF ITS DISCRETION, WOULD DENY THE APPLICANT CONSENT TO PROSECUTE EVEN IF A PRIMA FACIE CASE OR ARGUABLE POINT OF LAW HAD IN FACT BEEN ESTABLISHED.

(UNDERLINING MINE)

4. PARAGRAPH 30 OF THE BOARD DECISION 19-72-PH IS OF PARTICULAR INTEREST BECAUSE DISCRETION IS EXERCISED "EVEN IF THERE WERE AN ESTABLISHED PRIMA FACIE CASE OR ARGUABLE POINT OF LAW". NOTHING WOULD APPEAR TO HAVE ALLOWED THE UNION TO SUCCEED IN ITS APPLICATION IN THAT CASE, SINCE A PRIMA FACIE CASE OR AN ARGUABLE POINT OF LAW APPEAR TO BE THE ONLY GROUNDS ON WHICH CONSENT MAY BE GRANTED BY THE BOARD.

5. THE MINORITY DECISION IN BOARD FILE 19-72-PH SETS OUT CERTAIN EVIDENTIARY FACTS OF HISTORICAL RELEVANCE IN THE DISPUTE BETWEEN THE UNION AND THE HOSPITAL. THESE FACTS ILLUSTRATE THE DEPTH OF THE DIFFERENCE BETWEEN THE PARTIES, EVEN BEFORE THERE WAS A STRIKE. PARAGRAPH 14 AND PARAGRAPH 15 OF THAT MINORITY DECISION MAKE IMPORTANT OBSERVATIONS:

14. IT IS NOT IN DISPUTE, BASED ON THE EVIDENCE, THAT BOTH PARTIES, THE HOSPITAL AND THE UNION, HAVE ACTED OUTSIDE THE LAW GOVERNING THEIR INDUSTRIAL RELATIONS. SANDWICHED IN BETWEEN THESE TWO DISPUTANTS ARE THE PUBLIC, SOME OF WHOM AT THE RELEVANT TIME ARE PATIENTS IN THE HOSPITAL.

15. THE UNION ACCUSES THE HOSPITAL OF BAD FAITH IN BARGAINING IN VIOLATION OF THE LAW. THE HOSPITAL

ACCUSES THE UNION OF ENGAGING IN AN ILLEGAL STRIKE IN VIOLATION OF THE LAW. THE UNION IN THE INSTANT CASE ACCUSES THE HOSPITAL OF A CLEAR VIOLATION OF SECTION 3 OF THE HOSPITAL ACT. HAVING REGARD TO ALL THE EVIDENCE IN THIS MATTER, I AM SATISFIED THAT THE ALLEGATIONS BY BOTH THE HOSPITAL AND THE UNION HAVE BEEN ESTABLISHED PRIMA FACIE AND THAT THERE IS AN ARGUABLE QUESTION OF LAW INVOLVED IN THESE ALLEGATIONS. THE UNION CLAIMS JUSTIFICATION FOR ITS ILLEGAL ACT BECAUSE OF THE ALLEGED VIOLATION OF THE LAW BY THE HOSPITAL. THE HOSPITAL CLAIMS JUSTIFICATION FOR ITS ILLEGAL ACT BECAUSE OF THE ILLEGAL BEHAVIOUR OF THE UNION. FOR EITHER PARTY IN THIS VITAL PUBLIC INTEREST DISPUTE INVOLVING HOSPITAL PATIENT CARE TO CLAIM JUSTIFICATION FOR LAW BREAKING BECAUSE OF THE DIRTY HANDS OF THE OTHER IS COMPLETELY UNACCEPTABLE TO ME.

(UNDERLINING MINE)

6. IN THE INSTANT CASE, SECTION 87 OF THE ONTARIO LABOUR RELATIONS ACT IS A BAR TO THE APPLICANT BECAUSE THE HOSPITAL WAS PROTECTED FROM THE POSSIBILITY OF PROSECUTION BY THE BOARD'S DECISION IN BOARD FILE NO. 19-72-PH. I AM BOUND, AS MY COLLEAGUES ARE BOUND, BY THE BOARD'S DECISION IN FILE NO. 19-72-PH. HAD THERE BEEN RECONSIDERATION BY THAT PANEL, AND HAD THAT DECISION BEEN REVERSED, SECTION 87 MIGHT WELL BE AVAILABLE AGAINST THE TRUSTEES IN THE INSTANT CASE, DEPENDING UPON THE EVIDENCE THIS DIVISION OF THE BOARD WOULD HAVE HEARD HAD IT PROCEEDED. HOWEVER, SUCH IS NOT THE CASE AT THE PRESENT TIME.

7. BEFORE LEAVING THIS MATTER, I FEEL OBLIGED TO COMMENT THAT MR. PATRICK MURPHY, ON BEHALF OF THE APPLICANT, EXPRESSED CONCERN OVER THE PLIGHT OF SOME 350 FORMER EMPLOYEES OF TORONTO WESTERN HOSPITAL WHO WERE DISMISSED FOLLOWING THEIR REFUSAL TO RETURN TO WORK AFTER THE BOARD DECLARED THAT THEY WERE ENGAGED IN AN UNLAWFUL STRIKE. ALTHOUGH THIS EXPRESSION OF CONCERN MERITS GENERAL PUBLIC SUPPORT, IT IS NOTED THAT THE APPLICANT DID NOT SEE FIT TO ENCOURAGE THE EMPLOYEES TO RETURN TO WORK FOLLOWING THE DECLARATION THAT THE STRIKE WAS UNLAWFUL. THE RESPONSIBLE AND COMMENDABLE DECISION WOULD HAVE BEEN TO CALL ON THE WORKERS TO RETURN TO THEIR JOBS, RATHER THAN TO MAINTAIN THE STRIKE AS A WEAPON IN THE CAMPAIGN FOR CHANGES IN THE HOSPITAL ACT.

8. THE DISCHARGED EMPLOYEES APPEAR TO BE "CANNON-FODDER" IN THE WAR OF ATTRITION BEING CARRIED ON BETWEEN THE PARTIES, AS EVIDENCED BY THE MULTITUDE OF LEGAL APPLICATIONS THAT HAVE BEEN MADE IN THE COURTS AND BEFORE THIS BOARD BY BOTH SIDES. TO DATE NONE OF THE APPLICATIONS LAUNCHED BY THE APPLICANT UNION HAVE MET WITH SUCCESS. PROBABLY THOSE APPLICATIONS HAVE SERVED TO HARDEN THE POSITION TAKEN BY TORONTO WESTERN HOSPITAL WITH RESPECT TO RE-HIRING THE DISCHARGED EMPLOYEES. IT MAY BE THAT IF THE TWO PRINCIPAL COMBATANTS - THE HOSPITAL AND THE UNION - WERE TO STOP FURTHER ATTACKS AGAINST EACH OTHER, THE HOSPITAL MIGHT BE CON-

STRAINED TO RECONSIDER ITS DECISION WITH RESPECT TO THOSE UNFORTUNATE PERSONS WHO LOST THEIR JOBS. I AM CONFIDENT THAT THIS BOARD WOULD LIKE TO ENCOURAGE SUCH RECONSIDERATION, AND I HAVE NO HESITATION IN CALLING UPON THE HOSPITAL TO NOW GIVE THAT COURSE THE MOST SERIOUS AND SYMPATHETIC ATTENTION. FROM ALL THE EVIDENCE ALLUDED TO BY THE PARTIES, IT APPEARS THAT IF THE SITUATION OF THE DISCHARGED EMPLOYEES IS TO BE ALLEVIATED, IT WOULD HAVE TO BE BY WAY OF GRATUITOUS UNILATERAL ACTION ON THE PART OF TORONTO WESTERN HOSPITAL. APPARENTLY, BASED ON THE DECISIONS THE BOARD HAS MADE TO DATE IN THIS MATTER, NO LEGAL REMEDY IS AVAILABLE FOR THE RELIEF OF THE DISCHARGED EMPLOYEES.

9. PRESIDENT PATRICK MURPHY OF THE APPLICANT UNION SAID THAT HE WISHED TO BRING NEW EVIDENCE AGAINST THE HOSPITAL TO THE ATTENTION OF THIS DIVISION OF THE BOARD. HOWEVER, FOR THE REASONS ALREADY GIVEN WITH RESPECT TO SECT ON 87, THIS DIVISION OF THE BOARD CANNOT HEAR THAT EVIDENCE. THIS REMAINS, AS HAS BEEN SAID, A MATTER THAT THE APPLICANT MAY TAKE TO THE DIVISION OF THE BOARD THAT DEALT WITH FILE NO. 19-72-PH, IN AN APPLICATION FOR RECONSIDERATION.

2446-72-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. LECOIRS LUMBER COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

DECISION OF THE BOARD:

NOVEMBER 21, 1972.

1. PURSUANT TO THE DECISION OF THE BOARD IN THIS MATTER DATED SEPTEMBER 18, 1972 A REPRESENTATION VOTE WAS CONDUCTED IN THIS MATTER CULMINATING IN THE REPORT OF THE RETURNING OFFICER HEREIN DATED OCTOBER 24, 1972.
2. BY SEPARATE LETTERS DATED OCTOBER 31, 1972, BOTH COUNSEL FOR THE RESPONDENT AND COUNSEL FOR ODILON PAYEUR (THE SPOKESMAN FOR THE OBJECTORS) HAVE REQUESTED A HEARING BEFORE THE BOARD IN ORDER TO MAKE REPRESENTATIONS CONCERNING MATTERS RELATING TO THE SAID REPORT.
3. THE FIRST OBJECTION TO THE REPRESENTATION VOTE RAISED BY COUNSEL FOR THE RESPONDENT IS AS FOLLOWS:

"THERE WERE TWO BALLOTS WHICH WERE MARKED WITH A TICK MARK (✓) AS OPPOSED TO THE 'X' WHICH IS REQUIRED IN ACCORDANCE WITH THE INSTRUCTIONS SET FORTH ON THE FORM OF BALLOT ISSUED BY THE BOARD. THE EXAMINER, MR. A. MORROW, RULED THAT THE TWO SAID BALLOTS WERE NOT SPOILED AND SHOULD BE PROPERLY COUNTED. IT IS OUR SUBMISSION THAT THE

TWO BALLOTS WITH THE TICK MARK SHOULD BE REGARDED AS SPOILED BALLOTS BY VIRTUE OF NON COMPLIANCE WITH THE VERY REQUIREMENTS OF THE RULES OF PROCEDURE DETERMINED BY THE BOARD."

4. THE POSITION OF THE BOARD IN THIS REGARD IS CLEARLY SET OUT IN THE NATIONAL STARCH AND CHEMICAL CO. (CANADA) LTD. CASE OLRB M. R. JUNE 1968, P. 285 WHERE AT PAGE 286, APPEARS THE FOLLOWING:

"WHILE THERE ARE A MULTITUDE OF CASES CONCERNING ELECTIONS UNDER THE ELECTION ACT, IT SHOULD BE POINTED OUT THAT THIS BOARD IS NOT BOUND BY THE PROVISIONS OF THAT ACT AND SUCH CASES ARE NOT NECESSARILY HELPFUL TO THE DETERMINATION OF THIS MATTER. ON REPRESENTATION VOTES CONDUCTED BY THIS BOARD, BALLOTS SHOULD BE COUNTED WHERE THE CHOICE OF THE VOTER IS CLEARLY INDICATED ON THE FACE OF THE BALLOT AND THE IDENTITY OF THE VOTER IS NOT DISCLOSED. WHERE THESE TWO TESTS ARE SATISFIED, EVEN THOUGH THE BALLOT HAS NOT BEEN MARKED WITH AN "X", THERE IS NO REASON TO DISCARD THE BALLOT AS A SPOILED BALLOT."

ACCORDINGLY, THE RULING OF MR. A. MORROW, IN THESE CIRCUMSTANCES IS UPHELD.

5. THE SECOND OBJECTION RAISED BY COUNSEL FOR THE RESPONDENT IS AS FOLLOWS:

"THE VOTING CONSTITUENCY IN WHICH THE INSTANT REPRESENTATION VOTE WAS HELD WAS VIRTUALLY COMPLETELY FRENCH, THAT IS THE VOTERS WERE FRENCH SPEAKING WITH LITTLE OR NO KNOWLEDGE OF THE ENGLISH LANGUAGE. IT IS THE POSITION OF THE RESPONDENT HEREIN THAT SINCE THE FORM OF THE BALLOT WAS IN ENGLISH, THAT THE VOTERS WERE IN FACT CONFUSED AND DID NOT PROPERLY ASCERTAIN THE NATURE OF THE DOCUMENT THEY WERE REQUIRED TO MARK, AND THE CONSEQUENCES OF MARKING IT IN ONE LOCATION OR ANOTHER, (I.E. BESIDE "YES" OR BESIDE "NO"). A PRELIMINARY INVESTIGATION INTO THE MATTER HAS FULLY CONFIRMED THE REPRESENTATIONS SET FORTH ABOVE. ACCORDINGLY, THE RESPONDENT IS HEREBY REQUESTING THAT THE REPRESENTATION VOTE HEREIN OF OCTOBER 24TH, 1972 BE DECLARED A NULLITY AND THAT A NEW REPRESENTATION VOTE BE HELD WHEREIN BALLOTS IN THE FRENCH SPEAKING LANGUAGE ARE USED.

THESE REPRESENTATIONS AND SUBMISSIONS ARE BEING MADE WITH FULL KNOWLEDGE OF BOARD PRACTICE AS SAME PERTAINS TO LANGUAGES OTHER THAN THE ENGLISH LANGUAGE, BUT WE WOULD POINT OUT THAT BOARD PRACTICE HAS ALWAYS CONSISTENTLY MAINTAINED THAT THE CHOICE OF THE VOTER BE CLEARLY INDICATED.

OUR PRELIMINARY INVESTIGATION INTO THIS MATTER WOULD INDICATE THAT THE TRUE CHOICE OF A SUBSTANTIAL NUMBER OF VOTERS IN THE INSTANT REPRESENTATION VOTE COULD NOT POSSIBLY BE CLEARLY INDICATED ON OR ASCERTAINED BY A BALLOT MARKED BY SUCH SAID VOTERS WHO DO NOT UNDERSTAND AND/OR WHO CANNOT READ THE BALLOT IN QUESTION AND WHO DO NOT APPRECIATE THE CONSEQUENCES OF MARKING THE BALLOT IN ONE LOCATION OR ANOTHER (I.E. BESIDE "YES" OR BESIDE "NO").

6. IN THIS REGARD, IT WOULD APPEAR THAT COUNSEL FOR THE RESPONDENT IS JOINED BY COUNSEL FOR ODILON PAYEUR, WHO STATES AS FOLLOWS:

"MR. PAYEUR IS A FRENCH SPEAKING CANADIAN WHOSE FACILITY WITH THE ENGLISH LANGUAGE IS QUITE LIMITED. HOWEVER, I HAVE BEEN ABLE TO ASCERTAIN FROM HIM THAT THE VOTERS IN THIS PARTICULAR PROCEEDING WERE ALMOST ENTIRELY FRENCH SPEAKING AND UNABLE TO ASCERTAIN THE INSTRUCTIONS CONTAINED IN THE NOTICE OF TAKING THE VOTE AND THAT THEY WERE IN FACT CONFUSED BY THE FORM OF THE BALLOT ITSELF.

WHILE I UNDERSTAND THAT THE BOARD'S PRACTICE IS THAT INSTRUCTIONS AND BALLOTS ARE IN ENGLISH IT IS MY CLIENT'S SUBMISSION THAT THE BOARD SHOULD PROPERLY HAVE ARRANGED FOR BILINGUAL INSTRUCTIONS AND A BILINGUAL BALLOT IN A PREDOMINANTLY FRENCH SPEAKING COMMUNITY IN NORTHERN ONTARIO. THIS IS PARTICULARLY SO WHEN THE BOARD SAW FIT, AT THE INITIAL HEARING OF THE APPLICATION FOR CERTIFICATION, TO PROVIDE AN INTERPRETER FOR MR. PAYEUR.

I AM INSTRUCTED THAT A NUMBER OF VOTERS WHO HAD WISHED TO VOTE AGAINST THE APPLICANT UNION WERE SO THOROUGHLY CONFUSED BY THE PROCEEDINGS AT THE TIME OF THE VOTE AND SO COMPLETELY MISUNDERSTOOD THE BOARD'S INSTRUCTIONS GIVEN IN A TONGUE ALIEN TO THEM THAT THEY ENDED UP VOTING FOR THE APPLICANT UNION.

IN VIEW OF THE RESULT HEREIN IT IS SUBMITTED THAT THE BOARD SHOULD ORDER A NEW VOTE AND AT THE TIME OF THE TAKING OF THE VOTE INSTRUCTIONS IN FRENCH SHOULD BE GIVEN THAT THE VOTERS MAY EXERCISE THEIR FRANCHISE IN ACCORDANCE WITH THEIR INTENTIONS."

7. WE FIND THE FOLLOWING BACKGROUND RELEVANT TO THESE PROCEEDINGS. THIS APPLICATION FOR CERTIFICATION WAS FILED ON AUGUST 21, 1972 AND A TERMINAL DATE HAD BEEN SET FOR AUGUST 31, 1972. THE FORM 5 NOTICE ADVISING THE EMPLOYEES OF THIS APPLICATION AND THE DATE FOR HEARING BEFORE THE BOARD, WAS POSTED ON THE PREMISES OF THE RESPONDENT ON AUGUST 25, 1972. THIS DOCUMENT WHICH IS ENTIRELY IN THE ENGLISH LANGUAGE PROVIDES IN PART AS FOLLOWS:

"5. ANY EMPLOYEE OR GROUP OF EMPLOYEES AFFECTED BY THE APPLICATION AND DESIRING TO MAKE REPRESENTATIONS TO THE BOARD IN OPPOSITION TO THIS APPLICATION MUST SEND TO THE BOARD A STATEMENT IN WRITING OF SUCH DESIRE, WHICH SHALL,

- (A) CONTAIN THE RETURN MAILING ADDRESS OF THE EMPLOYEE OR REPRESENTATIVE OF A GROUP OF EMPLOYEES;
- (B) CONTAIN THE NAME OF THE EMPLOYER CONCERNED; AND
- (C) BE SIGNED BY THE EMPLOYEE OR EACH MEMBER OF A GROUP OF EMPLOYEES.

6. THE STATEMENT OF DESIRE MUST BE,

- (A) RECEIVED BY THE BOARD NOT LATER THAN THE TERMINAL DATE SHOWN IN PARAGRAPH 4; OR
- (B) IF IT IS MAILED BY REGISTERED MAIL ADDRESSED TO THE BOARD AT ITS OFFICE, 400 UNIVERSITY AVENUE, TORONTO 2, ONTARIO, MAILED NOT LATER THAN THE TERMINAL DATE SHOWN IN PARAGRAPH 4.

7. A STATEMENT OF DESIRE THAT DOES NOT COMPLY WITH PARAGRAPHS 5 AND 6 WILL NOT BE ACCEPTED BY THE BOARD.

8. ANY EMPLOYEE, OR GROUP OF EMPLOYEES, WHO HAS INFORMED THE BOARD IN WRITING OF HIS OR

THEIR DESIRE IN ACCORDANCE WITH PARAGRAPHS 5 AND 6 MAY ATTEND AND BE HEARD AT THE HEARING IN PERSON OR BY A REPRESENTATIVE. ANY EMPLOYEE OR REPRESENTATIVE WHO APPEARS AT THE HEARING WILL BE REQUIRED TO TESTIFY, OR PRODUCE A WITNESS OR WITNESSES WHO WILL BE ABLE TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION, AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED, AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED."

8. IN COMPLIANCE WITH PARAGRAPHS 5 AND 6 OF THE SAID NOTICE, MR. PAYEUR BY REGISTERED LETTER DATED AUGUST 31, 1972, WROTE TO THE BOARD ENCLOSING THEREIN TWENTY HANDWRITTEN STATEMENTS OF DESIRE OPPOSING THE APPLICATION, EACH OF WHICH BORE THE WITNESSED SIGNATURE OF A PERSON PURPORTING TO BE AN EMPLOYEE OF THE RESPONDENT. BOTH MR. PAYEUR'S LETTER AND THE ENCLOSED STATEMENTS WERE IN FRENCH. UPON RECEIPT OF THIS CORRESPONDENCE, THE DEPUTY REGISTRAR OBTAINED A WRITTEN TRANSLATION IN ENGLISH AS INTERPRETED BY AN OFFICER OF THE DEPARTMENT OF LABOUR AND IN CONFORMITY WITH THE PRACTICE OF THE BOARD IN THIS REGARD, COPIES OF THE RELEVANT PORTIONS OF THE LETTER AND ONE OF THE STATEMENTS TOGETHER WITH THEIR CORRESPONDING ENGLISH TRANSLATION WERE FORWARDED TO THE PARTIES CONCERNED.

9. AS STATED IN THE SAID NOTICE, THE HEARING OF THIS MATTER WAS SET DOWN FOR SEPTEMBER 14, 1972, IN TORONTO, AND IN COMPLIANCE WITH PARAGRAPH 8 THEREIN, MR. PAYEUR WAS IN ATTENDANCE. PURSUANT TO THE BOARD'S NORMAL PRACTICE IN THESE CIRCUMSTANCES, THE DEPUTY REGISTRAR HAD MADE ARRANGEMENTS FOR THE ATTENDANCE OF AN INTERPRETER AT THE HEARING. HOWEVER, HIS SERVICES WERE NOT REQUIRED AS IT BECAME EVIDENT UPON RELEASE OF THE COUNT DURING THIS HEARING, THAT THE APPLICANT WAS ONLY IN A VOTE POSITION. ACCORDINGLY, THE BOARD FOUND THAT THE STATEMENTS IN OPPOSITION TO THE APPLICATION WERE NOT RELEVANT AND THEREFORE DID NOT CALL UPON MR. PAYEUR, WHO WAS REPRESENTED BY COUNSEL AT THE HEARING, TO PROVE THE VOLUNTARINESS OF THESE DOCUMENTS.

10. BY LETTER DATED OCTOBER 6, 1972, THE REGISTRAR CONFIRMED WITH THE PARTIES THAT ARRANGEMENTS HAD BEEN MADE FOR THE TAKING OF THE VOTE ON OCTOBER 24, 1972, ON THE RESPONDENT'S PREMISES AT CALSTOCK. ENCLOSED IN THIS LETTER WERE THE DIRECTIONS OF THE BOARD (NOTICE OF TAKING OF VOTE - FORM 42 OF THE BOARD'S RULES OF PROCEDURE) WHICH WERE PROPERLY POSTED BY THE RESPONDENT. EMBODIED IN THESE DIRECTIONS WAS A SAMPLE OF THE EXACT FORM OF BALLOT AS REPRODUCED IN PARAGRAPH NO. 11 HEREIN. UP TO THE TIME OF THE VOTE, THERE WAS NO COMPLAINT MADE TO THE BOARD THAT THESE DIRECTIONS WHICH WERE ENTIRELY IN ENGLISH WERE NOT UNDERSTOOD.

11. THE FORM OF BALLOT UTILIZED AT THE VOTE IS REPRODUCED AS FOLLOWS:

**Mark "X" opposite your choice
IN YOUR EMPLOYMENT RELATIONS WITH**

LECOURS LUMBER COMPANY LIMITED,

DO YOU WISH TO BE REPRESENTED BY

LUMBER AND SAWMILL WORKERS
UNION, LOCAL 2995 OF THE
UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF
AMERICA

YES

NO

12. ALTHOUGH IT HAD BEEN MADE CLEAR TO ALL OF THE PARTIES CONCERNED AT THE HEARING OF THIS MATTER THAT A REPRESENTATION VOTE WOULD BE CONDUCTED NONE OF THE PARTIES RAISED WITH THE BOARD AT THAT TIME NOR AT ANY OTHER TIME PRIOR TO THE VOTE, THE POSSIBILITY THAT ANY OF THE EMPLOYEES IN THE BARGAINING UNIT DID NOT UNDERSTAND THE ENGLISH LANGUAGE AND ACCORDINGLY WOULD BE CONFUSED IN INTERPRETING THE WRITTEN INSTRUCTIONS FROM THE BOARD AND THE CONTENTS OF THE BALLOT. NOR DID THE PARTIES RECOMMEND TO THE BOARD ANY ARRANGEMENTS WHEREBY SUCH A PROBLEM COULD BE ALLEVIATED. CERTAINLY, THERE WOULD BE NOTHING TO PREVENT THE PARTIES, PRIOR TO THE TIME FOR TAKING OF THE VOTE, FROM PREPARING AN ADEQUATE TRANSLATION OF THE BOARD'S DIRECTIONS AND THE FORM OF BALLOT. THE PARTIES COULD THEN AGREE THAT SUCH A TRANSLATION BE POSTED BY THE COMPANY ALONG SIDE OF THE BOARD'S OFFICIAL NOTICE, FOR THE INFORMATION OF THOSE EMPLOYEES WHO SPEAK A LANGUAGE OTHER THAN ENGLISH. IN OUR OPINION, THERE IS AN ONUS UPON THE PARTIES TO RAISE THE ISSUE AT THE PROPER TIME SO THAT SUCH ARRANGEMENTS CAN BE MADE. IN THIS WAY, THE PARTIES HAVING AGREED TO THE ARRANGEMENTS, THERE CAN BE NO CONTEST BETWEEN THEM CONCERNING THE TRANSLATION OF THE BOARD'S DOCUMENTS. THE BOARD, HOWEVER, HAS CONSISTENTLY REFRAINED FROM TAKING AN ACTIVE ROLE IN THESE ARRANGEMENTS. IN THIS REGARD, IT SHOULD BE NOTED THAT THE BOARD'S RULES OF PROCEDURE WHICH SET OUT THE PRESCRIBED FORMS AND THE FORM OF THE BALLOT, PROVIDE FOR SAME IN THE ENGLISH LANGUAGE ONLY.

13. AS REGARDS THE FORM OF THE BALLOT ITSELF, THE CONSISTENT PRACTICE OF THE BOARD, EVEN WHERE ALL OF THE PARTIES HAVE REQUESTED THAT THE BALLOTS BE PRINTED IN FRENCH AS WELL AS IN ENGLISH IS TO SUPPLY BALLOTS PRINTED IN THE ENGLISH LANGUAGE ONLY.

14. FURTHER, THE BOARD HAS NEVER ON ITS OWN MOTION, PROVIDED THE PARTIES WITH THE SERVICES OF AN INTERPRETER DURING THE CONDUCT OF A REPRESENTATION VOTE AND THE FACT THAT THE BOARD DOES OCCASIONALLY PROVIDE SUCH SERVICES FOR WITNESSES WHO ARE SUBJECT TO THE RIGOURS OF EXAMINATION AND CROSS-EXAMINATION AT HEARINGS CONDUCTED BEFORE THE BOARD, CREATES NO PRECEDENT IN THIS REGARD.

15. IN OUR OPINION, IT IS THEREFORE ARE OPEN FOR THE RESPONDENT AND THE OBJECTORS IN THESE CIRCUMSTANCES TO SIT IDLY BACK AND PROCEED WITH THE TAKING OF THE REPRESENTATION VOTE AND ONLY RAISE THESE ISSUES UPON DISCOVERING THAT THE RESULTS OF THE VOTE PROVED UNFAVOURABLE TO THEIR RESPECTIVE POSITIONS. FURTHER, TO NOW PERMIT THE RESPONDENT AND OBJECTORS TO FULLY CANVASS THE VIEWS OF THE EMPLOYEES FOLLOWING THE TAKING OF THE VOTE, WOULD EFFECTIVELY DESTROY THE SECRECY OF THE BALLOTS CAST THEREIN.

16. HAVING REGARD TO ALL OF THE CIRCUMSTANCES OF THIS CASE AND TAKING INTO ACCOUNT THE PRINCIPLES AND PRACTICES OF THE BOARD AS SET OUT ABOVE, WE ARE OF THE OPINION THAT NO FURTHER OPPORTUNITY OUGHT TO BE GIVEN TO THE RESPONDENT OR OBJECTORS TO MAKE REPRESENTATIONS IN THIS MATTER AND THE OBJECTIONS TO THE REPRESENTATION VOTE HELD HEREIN ARE ACCORDINGLY DISMISSED.

17. ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD MORE THAN FIFTY PER CENT OF THE BALLOTS CAST WERE CAST IN FAVOUR OF THE APPLICANT.

18. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

19. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

2579-72-R: UNITED PAPERWORKERS INTERNATIONAL UNION (APPLICANT) V. CAMERON PACKAGING INC. (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: L. A. MACLEAN, CHRIS MONK AND JOHN CONNORS FOR THE APPLICANT; MICHAEL GORDON AND HUGH CAMERON FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 27, 1972.

1. THE APPLICANT APPLIED ON SEPTEMBER 20, 1972 AND REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

2. FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE A HEARING WAS HELD AT WHICH THE RESPONDENT CALLED EVIDENCE IN SUPPORT OF ITS ALLEGATION THAT THE BARGAINING UNIT WAS IN THE PROCESS OF A BUILD-UP. THE EVIDENCE ESTABLISHED THAT, ALTHOUGH THE RESPONDENT HOPED FOR INCREASED BUSINESS BASED ON ITS PROJECTIONS OF MARKET AND COMPETITIVE CONDITIONS DURING THE NEXT YEAR, HOWEVER, THE EVIDENCE FELL SHORT OF ESTABLISHING THAT THE RESPONDENT HAD A FIRM PLAN FOR AN IMMINENT BUILD-UP OF THE BARGAINING UNIT AT THE TIME THIS APPLICATION WAS MADE.

3. EVEN IF THE CONDITIONS PERMITTED THE INCREASE OF THE BARGAINING UNIT TO 55 EMPLOYEES AS HOPED FOR BY THE RESPONDENT BY APRIL 1973, THE NUMBER IN THE BARGAINING UNIT AT THE TIME THIS APPLICATION WAS MADE WAS MORE THAN 50 PER CENT OF THAT FIGURE AND ALSO THE APPLICANT'S MEMBERSHIP POSITION WAS SUCH, AT THE TIME THIS APPLICATION WAS MADE, THAT IT WOULD ENTITLE THE APPLICANT TO A REPRESENTATION VOTE IN A BARGAINING UNIT OF THE SIZE HOPED FOR BY THE APPLICANT IN APRIL 1973. HOWEVER THAT MAY BE, WHEN THE VOTE IN THIS MATTER WAS TAKEN, THERE WERE 39 EMPLOYEES ON THE VOTERS' LIST ON OCTOBER 16, 1972 AND ACCORDINGLY AN INCREASE FROM 39 TO 55 EMPLOYEES BY APRIL 1973 CANNOT PROPERLY BE CHARACTERIZED AS AN "IMMINENT" BUILD-UP OF THE BARGAINING UNIT WHICH WOULD CAUSE THE BOARD TO APPLY THE BUILD-UP PRINCIPLE AND THEREBY DELAY CONSIDERATION OF THE APPLICATION IN THIS MATTER.

4. THE BOARD THEREFORE DIRECTS THE REGISTRAR TO CAUSE THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER TO BE COUNTED AND REPORT TO THE BOARD.

2741-72-M: MISS EILEEN SKILLEN (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 1316 (RESPONDENT TRADE UNION) V. THE BOARD OF EDUCATION FOR THE CITY OF TORONTO (RESPONDENT EMPLOYER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: GERALD VANDEZANDE FOR THE APPLICANT; R. J. ANDERSON AND M. HIKEL FOR THE RESPONDENT TRADE UNION; NO ONE FOR THE RESPONDENT EMPLOYER.

DECISION OF THE BOARD: NOVEMBER 29, 1972.

1. THE APPLICANT HAS APPLIED PURSUANT TO THE PROVISIONS OF SECTION 39 OF THE LABOUR RELATIONS ACT FOR EXEMPTION ON THE GROUNDS OF RELIGIOUS CONVICTION OR BELIEF FROM THE UNION SECURITY PROVISIONS IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENTS. THIS APPLICATION WAS MADE ON OCTOBER 23, 1972.

2. THE RESPONDENTS WERE PARTIES TO A COLLECTIVE AGREEMENT WHICH READS IN PART AS FOLLOWS:

ARTICLE 20 - TERM OF AGREEMENT

20.01 THIS AGREEMENT SHALL BE IN FORCE FOR A TERM OF ONE YEAR EFFECTIVE FROM JANUARY 1, 1971, AND SHALL CONTINUE IN FORCE FROM YEAR TO YEAR THEREAFTER, UNLESS IN ANY YEAR NOT MORE THAN SIXTY DAYS, AND NOT LESS THAN THIRTY DAYS, BEFORE THE DATE OF ITS TERMINATION, EITHER PARTY SHALL FURNISH THE OTHER WITH NOTICE OF TERMINATION OF, OR PROPOSED REVISION OF, THIS AGREEMENT. DURING NEGOTIATIONS ON ANY PROPOSED RENEWAL OR REVISION OF THIS AGREEMENT, THE AGREEMENT, IN THE FORM IN WHICH IT MAY BE AT THE COMMENCEMENT OF SUCH NEGOTIATIONS, SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL A SATISFACTORY SETTLEMENT OF SUCH NEGOTIATIONS HAS BEEN REACHED OR UNTIL THE CONCILIATION PROCEDURE PROVIDED UNDER THE ONTARIO LABOUR RELATIONS ACT HAS BEEN EXHAUSTED, WHICHEVER FIRST OCCURS.

3. THE EVIDENCE ESTABLISHED THAT IN THE LATTER PART OF 1971 NEGOTIATIONS COMMENCED FOR A RENEWAL OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENTS. FOLLOWING RATIFICATION BY THE UNION MEMBERS AT A MEETING HELD ON OCTOBER 24, 1972, A NEW COLLECTIVE AGREEMENT WAS ENTERED INTO BETWEEN THE RESPONDENTS.

4. THIS NEW COLLECTIVE AGREEMENT CONTAINED RETROACTIVE PROVISIONS DATING BACK TO JANUARY 1972.

5. AT THE HEARING IN THIS MATTER THE RESPONDENT UNION ARGUED THAT THIS APPLICATION WAS UNTIMELY DUE TO THE FACT THAT THE APPLICANT HAD AMPLE TIME TO MAKE HER APPLICATION AND FAILED TO DO SO UNTIL OCTOBER 23, 1972. THIS LATTER DATE WAS SUBSEQUENT TO DECEMBER 31, 1971, THE LAST DAY OF THE ONE YEAR PERIOD OF THE OPERATION OF THE COLLECTIVE AGREEMENT. THE UNION ALSO ARGUED THAT THE NEW COLLECTIVE AGREEMENT WAS MADE RETROACTIVE TO JANUARY 1972 AND ACCORDINGLY THIS APPLICATION WAS UNTIMELY.

6. THE COLLECTIVE AGREEMENT IN THIS MATTER ON ITS FACE REMAINED IN EFFECT AFTER THE FIRST YEAR TERM OF ITS OPERATION "UNTIL A SATISFACTORY SETTLEMENT OF SUCH NEGOTIATIONS HAS BEEN REACHED". IT CANNOT BE SAID THAT A SATISFACTORY SETTLEMENT WAS REACHED UNTIL THE NEW COLLECTIVE AGREEMENT WAS ENTERED INTO. SINCE THE NEW COLLECTIVE AGREEMENT WAS ENTERED INTO SUBSEQUENT TO THE DATE THAT THIS APPLICATION WAS MADE, THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES IN THIS MATTER REMAINED IN EFFECT AT THE TIME THAT THIS APPLICATION WAS MADE. IN ADDITION, THE RESPONDENTS COULD NOT DEPRIVE THE APPLICANT OF HER RIGHTS UNDER SECTION 39 OF THE ACT BY ENTERING INTO A COLLECTIVE AGREEMENT CONTAINING RETROACTIVE PROVISIONS, SUBSEQUENT TO THE TIME THAT THIS APPLICATION WAS MADE.

7. WE ACCORDINGLY FIND THAT THIS APPLICATION IS TIMELY UNDER THE PROVISIONS OF SECTION 39(2) OF THE ACT.

8. IN AN APPLICATION UNDER SECTION 39 OF THE ACT THE BOARD CANNOT MAKE ITS DETERMINATION ON THE INTELLECTUAL INTEGRITY OF THE REASONING BEHIND THE BELIEF EXPRESSED BY THE APPLICANT. THE ONLY MATTER THAT OUGHT TO CONCERN THE BOARD IS WHETHER THE APPLICANT'S OBJECTION IS BASED ON A SINCERE RELIGIOUS CONVICTION OR BELIEF.

9. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD IS SATISFIED THAT THE APPLICANT IS AN EMPLOYEE OF THE RESPONDENT EMPLOYER WHO, BECAUSE OF HER RELIGIOUS CONVICTION OR BELIEF, OBJECTS TO CONTINUING TO BE A MEMBER OF THE RESPONDENT TRADE UNION AND OBJECTS TO THE PAYING OF UNION DUES OR OTHER ASSESSMENTS TO THE RESPONDENT TRADE UNION.

10. THE BOARD THEREFORE ORDERS AND DIRECTS THAT THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT EMPLOYER AND THE RESPONDENT TRADE UNION WHICH ARE OF THE TYPE MENTIONED IN ARTICLE 38(1)(A) OF THE ACT DO NOT APPLY TO THE APPLICANT AND ACCORDINGLY THE APPLICANT IS NOT REQUIRED TO BE OR CONTINUE TO BE A MEMBER OF THE RESPONDENT TRADE UNION OR TO PAY ANY DUES, FEES OR ASSESSMENTS TO THE TRADE UNION, PROVIDED THAT AMOUNTS EQUAL TO ANY DUES, FEES OR OTHER ASSESSMENTS ARE PAID BY THE APPLICANT TO OR ARE REMITTED BY THE RESPONDENT EMPLOYER TO A CHARITABLE ORGANIZATION MUTUALLY AGREED UPON BY THE APPLICANT AND THE RESPONDENT TRADE UNION.

11. HOWEVER, IF THE APPLICANT AND THE RESPONDENT TRADE UNION FAIL TO AGREE ON SUCH CHARITABLE ORGANIZATION, THE BOARD, UPON THE REQUEST OF EITHER THE APPLICANT OR THE RESPONDENT TRADE UNION, WILL DESIGNATE, PURSUANT TO THE PROVISIONS OF SECTION 39(1) OF THE ACT, A CHARITABLE ORGANIZATION REGISTERED AS SUCH IN CANADA UNDER PART I OF THE INCOME TAX ACT (CANADA).

CASE LISTINGS NOVEMBER 1972

	PAGE
1. CERTIFICATION	
(A) BARGAINING AGENTS CERTIFIED	280
(B) APPLICATIONS DISMISSED	295
(C) APPLICATIONS WITHDRAWN	298
2. APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS	300
3. APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS	300
4. APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL	300
5. APPLICATIONS FOR CONSENT TO PROSECUTE	300
6. APPLICATIONS FOR CONSENT TO PROSECUTE (HOSPITAL ARBITRATION ACT)	301
7. COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)	303
8. APPLICATIONS UNDER SECTION 39 (FORMERLY S. 35(A))	304
9. APPLICATIONS UNDER SECTION 55 (FORMERLY S. 47A)	304
10. JURISDICTIONAL DISPUTE	305
11. APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))	305
12. REFERENCE TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)	305
13. APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	305

2643-72-M: CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 1255 (APPLICANT) V. THE CORPORATION OF THE TOWN OF PICTON (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

2255-72-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (APPLICANT) V. DRUMMOND BUSINESS FORMS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

2388-72-R: RESTAURANT, CAFETERIA & TAVERN EMPLOYEES' UNION LOCAL 254, OF THE HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION (APPLICANT) V. BEAVER FOOD SERVICE ASSOCIATES LIMITED (RESPONDENT). (REQUEST DENIED).

2408-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. J. R. MENARD LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

[1972] 2 OLRB M.R. - PAGE 915.

2446-72-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. LECOURS LUMBER COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 95(2)

(FORMERLY S. 79(2))

1612-71-M: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LIVINGSTON TRANSPORTATION LIMITED (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 96

(FORMERLY S. 79A)

1006-71-M: R. W. S. DELIVERY SERVICES LIMITED (EMPLOYER) V. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (TRADE UNION) V. SWISS CHALET BAR-B-Q A DIVISION OF HARVEY'S FOODS LIMITED (ADDED PARTY). (REQUEST DENIED).

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING NOVEMBER 1972

BARGAINING AGENTS CERTIFIED DURING NOVEMBER

NO VOTE CONDUCTED

18803-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. ST. JOSEPH'S HOSPITAL, HAMILTON (RESPONDENT) V. NURSES' ASSOCIATION ST. JOSEPH'S HOSPITAL, HAMILTON (INTERVENER).

UNIT: "ALL REGISTERED AND NON-REGISTERED MEDICAL TECHNOLOGISTS EMPLOYED IN THE RESPONDENT'S MEDICAL LABORATORIES, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, STUDENTS PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE INTERVENER AND BETWEEN THE RESPONDENT AND LOCAL 786, CUPE." (123 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1189-71-R: MECHANICAL CONTRACTORS ASSOCIATION HAMILTON (APPLICANT) V. THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 67 (RESPONDENT) V. METROPOLITAN HAMILTON HOUSE BUILDERS' ASSOCIATION (INTERVENER #1) V. PIPE LINE CONTRACTORS ASSOCIATION OF CANADA (INTERVENER #2).

UNIT: "ALL EMPLOYERS OF EMPLOYEES ON WHOSE BEHALF THE RESPONDENT HAS BARGAINING RIGHTS IN THE FOLLOWING AREA, STARTING AT THE JUNCTION OF LAKE ONTARIO AND THE SEVENTH LINE IN THE TOWN OF OAKVILLE, THEN NORTH-WEST TO THE QUEEN ELIZABETH HIGHWAY, THEN THE EIGHTH LINE NORTH-WEST TO HIGHWAY NUMBER 401 JUST BEYOND HORNBY, JOIN THIS POINT TO FREELTON ON HIGHWAY NO. 6, THEN NORTH-WEST ON HIGHWAY NUMBER 6 TO THE WELLINGTON-WENTWORTH COUNTY LINE JUST SOUTH OF PUSLINCH, THEN FOLLOW THE WELLINGTON-WENTWORTH COUNTY LINE GENERALLY WESTERLY TO WHERE IT MEETS THE WATERLOO COUNTY LINE JUST EAST OF GALT, FROM THIS POINT FOLLOW THE WENTWORTH COUNTY LINE GENERALLY SOUTH TO WHERE IT ANGLES SOUTH-EAST TO NORTH SENCA ON HIGHWAY NUMBER 6 JUST NORTH OF CALEDONIA, FROM THIS POINT FOLLOW HIGHWAY NUMBER 6 TO PORT DOVER, THEN FOLLOW THE LAKE ERIE SHORELINE TO THE BORDER LINE BETWEEN SOUTH CAYUGA AND DUNN TOWNSHIP IN THE COUNTY OF HALDIMAND, JUST EAST OF THE VILLAGE OF SOUTH CAYUGA, THEN NORTH TO THE LINCOLN COUNTY LINE AT CAISTORVILLE, THEN NORTH-WEST ALONG THE LINCOLN-HALDIMAND COUNTY LINE TO THE POINT WHERE IT MEETS THE WENTWORTH COUNTY LINE THEN TO LAKE ONTARIO, FOLLOW THE SHORELINE OF LAKE ONTARIO TO THE STARTING POINT AT OAKVILLE, IN THE COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL SECTOR AND RESIDENTIAL SECTOR." (NO EMPLOYEES IN THE UNIT).

2114-72-R: FEDERATION OF CHILDREN'S AID STAFFS (APPLICANT) V. THE CHILDRENS AID SOCIETY OF THE COUNTY OF BRUCE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WALKERTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (11 EMPLOYEES IN THE UNIT).

2382-72-R: CSAO NATIONAL (INC.) (APPLICANT) V. SUDBURY MEMORIAL HOSPITAL (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1182, C.L.C. (INTERVENER).

UNIT: "ALL MEDICAL LABORATORY TECHNOLOGISTS AND MEDICAL LABORATORY ASSISTANTS OF THE RESPONDENT EMPLOYED BY THE RESPONDENT IN SUDBURY, SAVE AND EXCEPT ASSISTANT TECHNICAL DIRECTOR OF LABORATORY, PERSONS ABOVE THIS RANK, OFFICE AND CLERICAL WORKERS, STUDENTS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING THEIR SCHOOL VACATION PERIODS AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1182." (20 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2512-72-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE TOPPINGS COMPANY LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT SUPERVISOR, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, FULL TIME OUTSIDE SALESMEN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO EMPLOYED AS FULL TIME SALESMEN, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2516-72-R: CSAO NATIONAL (INC.) (APPLICANT) V. SUDBURY GENERAL HOSPITAL OF THE IMMACULATE HEART OF MARY (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1023 (INTERVENER #1) V. ONTARIO BRANCH, CANADIAN PHYSIOTHERAPY ASSOCIATION (INTERVENER #2) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL MEDICAL LABORATORY TECHNOLOGISTS AND MEDICAL LABORATORY TECHNICIANS EMPLOYED BY THE RESPONDENT IN ITS MEDICAL LABORATORIES AT SUDBURY, SAVE AND EXCEPT CHARGE TECHNOLOGISTS, PERSONS ABOVE THE RANK OF CHARGE TECHNOLOGIST, STUDENTS, ECG TECHNICIANS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1023, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796, AND THE NURSES' ASSOCIATION, SUDBURY GENERAL HOSPITAL." (16 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2555-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. PRESCOTT-RUSSELL COUNTY BOARD OF EDUCATION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT DIRECTOR OF EDUCATION, SUPERINTENDENTS, BUSINESS ADMINISTRATOR, ASSISTANT BUSINESS ADMINISTRATOR, PURCHASING AGENT, ACCOUNTANT, SUPERVISOR OF BUILDINGS AND GROUNDS, SECRETARY TO SECONDARY SCHOOL SUPERINTENDENT, SECRETARY TO THE BUSINESS ADMINISTRATOR OF THE BOARD, SECRETARY TO THE CHIEF EXECUTIVE OFFICER, SECRETARY TO THE BUILDING AND MAINTENANCE SUPERINTENDENT, SECRETARY TO THE ELEMENTARY PANEL SUPERINTENDENT, PERSONS COVERED BY EXISTING COLLECTIVE AGREEMENTS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (35 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2591-72-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. THE WILLETT HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PARIS, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD," (47 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

2616-72-R: CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 (APPLICANT) V. OLYMPIA AND YORK DEVELOPMENTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 145 KING STREET WEST (YORK CENTRE), TORONTO, SAVE AND EXCEPT ASSISTANT SUPERINTENDENT, PERSONS ABOVE THE RANK OF ASSISTANT SUPERINTENDENT, OFFICE, CLERICAL AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT AND REPRESENTATIONS OF THE PARTIES).

2622-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. OTTAWA AND DISTRICT ASSOCIATION FOR THE MENTALLY RETARDED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT THE EXECUTIVE DIRECTOR, THE SECRETARY TO THE EXECUTIVE DIRECTOR, THE DIRECTOR OF ADULT SERVICES, THE DIRECTOR OF SOCIAL SERVICES, THE DIRECTOR OF RESIDENTIAL CARE, THE DIRECTOR OF PRE-SCHOOL PROGRAMS, THE DIRECTOR OF THE DEVELOPMENTAL CENTRE, THE ACCOUNTANT, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (49 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2651-72-R: RETAIL CLERKS UNION, LOCAL 486 (APPLICANT) V. OAK PHARMACIES LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS RETAIL STORES IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON, SAVE AND EXCEPT STORE MANAGERS, PHARMACISTS, PERSONS ABOVE THE RANKS OF STORE MANAGER AND PHARMACIST, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT IN ITS RETAIL STORES IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT STORE MANAGERS AND PHARMACISTS, AND PERSONS ABOVE THE RANKS OF STORE MANAGER AND PHARMACIST." (11 EMPLOYEES IN THE UNIT).

2679-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. SCOTT'S NURSING HOME, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LINDSAY, SAVE AND EXCEPT GRADUATE NURSING STAFF, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, NURSING SUPERVISORS, PERSONS ABOVE THE RANK OF NURSING SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (49 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2696-72-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION 124 OTTAWA HULL (APPLICANT) V. YVON GAUVREAU (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

2703-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. IDEAL VENDERS, A DIVISION OF EDDY MATCH COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DESERONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (110 EMPLOYEES IN THE UNIT). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT TECHNICAL STAFF ARE NOT INCLUDED IN THE BARGAINING UNIT.).

2704-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. LIQUID CARBONIC CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS INDUSTRIAL GAS DIVISION AT BELLEVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2710-72-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, LOCAL 230, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. MASCIOLI CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS ENGAGED IN CONSTRUCTION IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS OF THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (17 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2711-72-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, LOCAL 230, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. MASCIOLI CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TIMMINS ENGAGED IN THE MANUFACTURING AND DISTRIBUTION OF CONCRETE PRODUCTS, READY-MIXED CONCRETE AND BUILDING MATERIALS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2712-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) V. DELTA '70 MANUFACTURING Co. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HARROW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (25 EMPLOYEES IN THE UNIT).

2714-72-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 120 (APPLICANT) V. PRECISION ALARMS AND SIGNAL SYSTEMS LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).

2715-72-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES - LOCAL 1891 (APPLICANT) V. DURABLE DRYWALL LTD. (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN

AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FOREGOING).

[1972] 2 OLRB M.R. - PAGE 939.

2718-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 446 (APPLICANT) V. A. I. NICOL (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THAT PORTION OF THE DISTRICT OF ALGOMA SOUTH OF THE 49TH PARALLEL OF LATITUDE, SAVE AND EXCEPT NON-WORKING FORMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

2720-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. PORT COLBORNE BLOCK LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT COLBORNE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

[1972] 2 OLRB M.R. - PAGE 972.

2729-72-R: RETAIL CLERKS UNION, LOCAL 486 (APPLICANT) V. INTERCITY FOOD SERVICES INC. (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RESTAURANTS IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON, SAVE AND EXCEPT HEAD HOSTESSES, PERSONS ABOVE THE RANK OF HEAD HOSTESS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RESTAURANTS IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON WHO ARE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2731-72-R: LOCAL UNION 894 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO-CLC (APPLICANT) V. HARVEY HUBBELL OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PICKERING, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALE STAFF." (33 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2744-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. A. ST. GERMAIN & FILS INC. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT)

2748-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF MANAGEMENT OF CASSELHOLME HOME FOR THE AGED FOR THE DISTRICT OF NIPISSING EAST (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 146 OF THE APPLICANT." (31 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

2755-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. E. S. FOX LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

2763-72-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, TEAMSTERS LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ZURN INDUSTRIES CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (9 EMPLOYEES IN THE UNIT).

2767-72-R: MILLWRIGHTS' LOCAL 2309, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. REDIRACK INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (35 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

2768-72-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. HARBRIDGE DEVELOPMENT CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (NO EMPLOYEES IN THE UNIT).

2769-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 446 (APPLICANT) V. JOHN A. MILNE (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THAT PORTION OF THE DISTRICT OF ALGOMA SOUTH OF THE 49TH PARALLEL OF LATITUDE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2770-72-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES TEAMSTERS LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. KNOB HILL AUTO SERVICE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (11 EMPLOYEES IN THE UNIT).

2772-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. THUNDER BAY WELDING & SUPPLIES LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF RAINY RIVER, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2773-72-R: NURSES' ASSOCIATION HURON LODGE (APPLICANT) V. THE CORPORATION OF THE CITY OF WINDSOR (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED IN A NURSING CAPACITY BY THE RESPONDENT AT HURON LODGE, SAVE AND EXCEPT THE SUPERVISOR OF NURSING SERVICES, PERSONS ABOVE THE RANK OF SUPERVISOR OF NURSING SERVICES AND THE TRAINING AND CO-ORDINATION OFFICER." (18 EMPLOYEES IN THE UNIT).

2783-72-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. FRANKEL STRUCTURAL STEEL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, OWNER OPERATORS, AND PERSONS PRESENTLY COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721, SHOPMEN'S LOCAL UNION 743 OF THE INTERNATIONAL

ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793." (13 EMPLOYEES IN THE UNIT).

2787-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION #494 (APPLICANT) V. E. S. MARTIN CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2788-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. NORTHEASTERN DEVELOPMENTS LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (16 EMPLOYEES IN THE UNIT).

2789-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. DOMINION DEWATERING LTD. SUBSIDIARY OF STANG HYDRONICS INS. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

2793-72-R: LOCAL 206 NATIONAL COUNCIL OF CANADIAN LABOUR (APPLICANT) V. SUNNYBROOK FOOD MARKET (KEELE) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN BRAMPTON, SAVE AND EXCEPT DEPARTMENT MANAGERS, HEAD OFFICE AND WAREHOUSE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE APPLICANT, EFFECTIVE JANUARY 1, 1971." (42 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2812-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. KINGSTON CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

2813-72-R: CANADIAN TRANSPORTATION WORKERS UNION No. 199 (APPLICANT) V. SUPERIOR SANITATION SERVICES LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT ITS TERMINAL IN KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (44 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT ITS TERMINAL IN HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

2817-72-R: STERLING PACKERS EMPLOYEES ASSOCIATION (APPLICANT) V. STERLING PACKERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT).

2829-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. MAPLE ENGINEERING & CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS, ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND ALL EMPLOYEES OF THE RESPONDENT IN THE SAID AREA ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

2830-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. VASTO CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

2840-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. PROGRESSIVE CONCRETE FORMING LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2841-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CANHOLD LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2848-72-R: LUMBER & SAWMILL WORKERS UNION LOCAL 2693, OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. CUYLER CONTRACTING CO. LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2859-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. I. C. SUATAC CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (25 EMPLOYEES IN THE UNIT).

2863-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. TERRAPIN BUILDING SYSTEMS (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

2873-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. PETERSON ELECTRIC COMPANY LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

APPLICATION CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

2609-72-R: W.T.T.F.M.P. WORKERS ASSOCIATION (APPLICANT) v. WILLIAMS MACHINES LIMITED (RESPONDENT) v. INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND ENGINEERING STAFF." (104 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		97
NUMBER OF PERSONS WHO CAST BALLOTS		97
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	57	
NUMBER OF BALLOTS MARKED AGAINST INTERVENER	39	

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

1500-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. SUNNYBROOK FOOD MARKET (KEELE) LIMITED (RESPONDENT) v. LOCAL 206, NATIONAL COUNCIL OF CANADIAN LABOUR (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN GUELPH, SAVE AND EXCEPT DEPARTMENT MANAGERS, HEAD OFFICE AND WAREHOUSE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL UNION 206, NATIONAL COUNCIL OF CANADIAN LABOUR, EFFECTIVE THE 1ST DAY OF JANUARY 1971." (57 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		25
NUMBER OF PERSONS WHO CAST BALLOTS		17
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	9	
NUMBER OF BALLOTS MARKED NO TRADE UNION	3	

1697-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) v. CANADIAN UNION OF COMMUNICATION WORKERS (INTERVENER #1) v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN KINGSTON TOWNSHIP, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, REGISTERED NURSES, TECHNICAL OFFICE AND CLERICAL EMPLOYEES, AND SECURITY GUARDS." (132 EMPLOYEES IN THE UNIT). (THE BOARD FURTHER STATED IN ITS DECISION DATED MARCH 24TH, 1972: 7. "THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS INSTALLERS ARE NOT INCLUDED IN THE VOTING CONSTITUENCY." 8. "THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT THE EXCLUSION OF TECHNICAL EMPLOYEES ARE THOSE TECHNICAL EMPLOYEES EMPLOYED BY THE RESPONDENT IN ITS OFFICE." THE BOARD STATES IN ITS FURTHER DECISION DATED JULY 25TH, 1972: 7. "...THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE REPRESENTATION VOTE BE SEALED PENDING THE FURTHER DIRECTION OF THE BOARD.").

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		210
NUMBER OF PERSONS WHO CAST BALLOTS	188	
BALLOTS SEGREGATED AND NOT COUNTED	4	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	140	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	44	

2240-72-R: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 210, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. RICHMOND NURSING HOMES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AMHERSTBURG, SAVE AND EXCEPT REGISTERED NURSES, GRADUATE NURSES, OCCUPATIONAL THERAPISTS, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (45 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		35
NUMBER OF PERSONS WHO CAST BALLOTS	34	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	23	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	10	

2257-72-R: INTERNATIONAL BROTHERHOOD OF POTTERY AND ALLIED WORKERS (APPLICANT) V. BLUE MOUNTAIN POTTERY DIVISION OF THE INTERNATIONAL SILVER CO. OF CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT COLLINGWOOD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (127 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		134
NUMBER OF PERSONS WHO CAST BALLOTS	111	
NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED	10	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	53	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	48	

2408-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. J. R. MENARD LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. ISADORE DE PRESCOTT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (60 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		62
NUMBER OF PERSONS WHO CAST BALLOTS	62	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	37	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	24	

2446-72-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. LECOURE LUMBER COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS WOODS OPERATIONS IN THE TOWNSHIP OF ROGERS AND THOSE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND SCALERS." (35 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		40
NUMBER OF PERSONS WHO CAST BALLOTS	40	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	21	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	19	

2556-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. THE CORPORATION OF THE TOWN OF SOUTHAMPTON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS WORKS DEPARTMENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

2569-72-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 540 (APPLICANT) V. BRUNT METAL PRODUCTS (HWY 27) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	17
NUMBER OF PERSONS WHO CAST BALLOTS	17
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5

2614-72-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (APPLICANT) V. DONOVAN CONSTRUCTION CO. OF CANADA LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

2638-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. McLEOD & SONS (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 1824 (INTERVENER).

UNIT: "ALL EMPLOYEES EMPLOYED BY THE RESPONDENT AS JOURNEYMEN PAINTERS, PAINTERS, DECORATORS, PAPERHANGERS AND THEIR APPRENTICES AND WORKING FOREMEN IN THE COUNTIES OF BRANT AND NORFOLK." (3 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0

APPLICATIONS FOR CERTIFICATION DISMISSED DURING NOVEMBER

NO VOTE CONDUCTED

447-71-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE S.E.I.U. A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. NATION-WIDE INTERIOR MAINTENANCE CO. LTD. (RESPONDENT). (96 EMPLOYEES).

664-71-R: NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS AFL-CIO-CLC (APPLICANT) V. THE OTTAWA BOARD OF EDUCATION (RESPONDENT). (287 EMPLOYEES).

1757-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. INDUSTRIAL & MINE INSTALLATIONS (QUEBEC) LIMITED LES INSTALLATIONS INDUSTRIELLES ET MINIERES (QUEBEC) LIMITEE (RESPONDENT). (8 EMPLOYEES).

2374-72-R: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES, UNION LOCAL 261, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. THE ALEXANDRA HOTEL (1971) LTD. (RESPONDENT). (44 EMPLOYEES).

[1972] 2 OLRB M.R. - PAGE 963.

2584-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA L. U. 93 (APPLICANT) V. DEMIRO CONST. LTD. (RESPONDENT). (NO EMPLOYEES).

2588-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. DELZOTTO (RESPONDENT). (NO EMPLOYEES).

2620-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. INVERLEIGH CONSTRUCTION LIMITED (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (INTERVENER). (4 EMPLOYEES).

2631-72-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) V. CAPITAL COACH LINES COMPANY LIMITED (RESPONDENT). (157 EMPLOYEES).

[1972] 2 OLRB M.R. - PAGE 945.

2707-72-R: AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (APPLICANT) V. JAMES HOWDEN & PARSONS OF CANADA, LIMITED (RESPONDENT). (19 EMPLOYEES).

2717-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. PEARSON CONSTRUCTION (RESPONDENT). (5 EMPLOYEES).

2754-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. D. R. CRAWFORD CONSTRUCTION LIMITED (RESPONDENT). (8 EMPLOYEES).

2757-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 765 (APPLICANT) V. CAMPBELL STEEL (RESPONDENT). (12 EMPLOYEES).

2771-72-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (APPLICANT) V. G. CAMERON ROCK DRILLING (RESPONDENT). (6 EMPLOYEES).

2809-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. DONALCO SERVICES LIMITED (RESPONDENT). (2 EMPLOYEES).

2854-72-R: LOCAL 666, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) V. COMFORT GUARD SERVICE (RESPONDENT). (12 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

1482-71-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. MICHAEL ROSEN REAL ESTATE LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL REAL ESTATE SALESMEN OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (31 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		23
NUMBER OF PERSONS WHO CAST BALLOTS	23	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	8	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	13	

2693-72-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. AERO ENVIRONMENTAL LTD. (RESPONDENT).

VOTING CONSTITUENCY: 'ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.' (69 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	59
NUMBER OF PERSONS WHO CAST BALLOTS	52
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	12
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	39

2736-72-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. MILMIC CARTAGE LIMITED (RESPONDENT).

VOTING CONSTITUENCY: 'ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, BROKERS, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK.' (12 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	9
NUMBER OF PERSONS WHO CAST BALLOTS	9
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	9

2739-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. F A G BEARINGS LIMITED (RESPONDENT).

VOTING CONSTITUENCY: 'ALL EMPLOYEES OF THE RESPONDENT AT STRATFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, SECURITY GUARDS, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.' (361 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	360
NUMBER OF PERSONS WHO CAST BALLOTS	350
NUMBER OF SPOILED BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	62
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	285

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

2193-72-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. RAY PLASTICS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (62 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	47
NUMBER OF PERSONS WHO CAST BALLOTS	40

BALLOT BOX SEALED

[1972] 2 OLRB M.R. - PAGE 946.

2474-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION #493 (APPLICANT) V. HEADWAY CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILES RADIUS OF THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	3

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING NOVEMBER

2615-72-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. DONALD TIDEY COMPANY LIMITED AND TIDEY CONSTRUCTION CO. LTD. (RESPONDENTS) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 18 (INTERVENER #1) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL, ON ITS OWN BEHALF AND ON BEHALF OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (INTERVENER #2). (3 EMPLOYEES).

2690-72-R: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL 629 (APPLICANT) V. JOHNSON CONTROLS LIMITED (RESPONDENT). (2 EMPLOYEES).

2699-72-R: TEAMSTERS LOCAL 990 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. DONOVAN CONSTRUCTION CO. OF CANADA LTD. (RESPONDENT). (2 EMPLOYEES).

2700-72-R: TEAMSTERS LOCAL 990 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. DONOVAN CONSTRUCTION CO. OF CANADA LTD. (RESPONDENT). (2 EMPLOYEES).

2702-72-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL, CIO - CLC (APPLICANT) V. CHARLES WILSON LIMITED (RESPONDENT). (6 EMPLOYEES).

2728-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL ON BEHALF OF LOCAL 247, KINGSTON AND LOCAL UNION 506, TORONTO (APPLICANT) V. SCHOKBETON QUEBEC INC. (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #1) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 765 (INTERVENER #2). (4 EMPLOYEES).

2737-72-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. FLEET EXPRESS LINES LTD. (RESPONDENT). (15 EMPLOYEES).

2751-72-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) V. AARVI CONSTR. CO. LTD. (RESPONDENT). (22 EMPLOYEES).

2781-72-R: LOCAL UNION 27, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. F. A. TUCKER ONTARIO LTD. (RESPONDENT). (2 EMPLOYEES).

2794-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. D. R. CRAWFORD CONSTRUCTION COMPANY AND/OR WHITNEY MAINTENANCE LIMITED (RESPONDENT). (4 EMPLOYEES).

2801-72-R: ASSOCIATION OF EMPLOYEES (APPLICANT) V. TIMMINS R.C.S.S. BOARD (RESPONDENT). (33 EMPLOYEES).

2810-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. STEED & EVANS LIMITED (RESPONDENT). (8 EMPLOYEES).

2842-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 625 (APPLICANT) V. E. S. MARTIN CONSTRUCTION LTD. (RESPONDENT). (5 EMPLOYEES).

2856-72-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. COCA-COLA LTD. (RESPONDENT). (30 EMPLOYEES).

2858-72-R: INTERNATIONAL UNION, UNITED PLANT GUARDS WORKERS OF AMERICA, AMALGAMATED PLANT GUARDS, LOCAL 1958 (APPLICANT) V. WACKENHUT OF CANADA, LIMITED (RESPONDENT). (NO EMPLOYEES).

2874-72-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, AMALGAMATED PLANT GUARDS, LOCAL 1958 (APPLICANT) V. WACKENHUT OF CANADA, LIMITED (RESPONDENT). (NO EMPLOYEES).

APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED

OF DURING NOVEMBER

2552-72-R: FRED WEPPLER, JIM SMITH, BERNARD DAVID STEVENSON, AND LARRY HAMEL (APPLICANTS) V. INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL-CIO-CLC (RESPONDENT) V. SEVEN-UP (ONTARIO) LIMITED (INTERVENER). (38 EMPLOYEES). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 965.

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

NOVEMBER

2706-72-R: GRAPHIC ARTS INTERNATIONAL UNION, LOCAL 12-L (APPLICANT) V. LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION LOCAL 12-L (RESPONDENT). (GRANTED).

2749-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. MCFARLANE GENDRON MANUFACTURING COMPANY LIMITED (RESPONDENT). (GRANTED).

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

NOVEMBER

2385-72-U: ROY CONSTRUCTION (NORTH BAY) LIMITED (APPLICANT) V. (1) UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 1669, (2) HARRY HEGGE, (3) THOMAS COPE, (4) M. CHEVALIER, (5) M. CHIASSON, (6) GLORIAN CARRIERE (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING NOVEMBER

2658-72-U: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. ATOMIK CONSTRUCTION COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

2684-72-U: ELLIS-DON CONSTRUCTION LIMITED (APPLICANT) V. I BORGEGELLI ET AL (RESPONDENTS). (WITHDRAWN).

2685-72-U: ELLIS-DON CONSTRUCTION LIMITED (APPLICANT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (RESPONDENT). (WITHDRAWN).

2705-72-U: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) V. PLAYTEX LTD. (RESPONDENT). (WITHDRAWN).

2708-72-U: BRANDON GENERAL CONTRACTORS LTD. (APPLICANT) V. K. W. BUILDING AND CONSTRUCTION TRADES COUNCIL; LEN DUNKEL; BRIAN STRICKLAND; WILLIAM COLLIER; AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 804 (RESPONDENT). (WITHDRAWN).

2735-72-U: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. SCOTT'S RESTAURANTS CO. LIMITED AND J. J. LEON (RESPONDENTS). (WITHDRAWN).

2758-72-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. JOHN DONOFRIO LTD. AND JOHN DONOFRIO (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE (HOSPITAL ARBITRATION ACT)

DISPOSED OF DURING NOVEMBER

18-72-PH: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. ROY H. BULGIN AND J. BOYD MCAULEY (RESPONDENTS). (DISMISSED).

22-72-PH: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. HORACE BROWN (RESPONDENT). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 976.

23-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. WILLIAM E. COUTTS (RESPONDENT). (DISMISSED).

24-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. GEORGE M. BLACK, JR. (RESPONDENT). (DISMISSED).

25-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. NELSON M. DAVIS (RESPONDENT). (DISMISSED).

26-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. DR. ROBERT G. LEE (RESPONDENT). (DISMISSED).

27-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. FRASER M. FELL (RESPONDENT). (DISMISSED).

28-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. DR. J. MICHAEL CAMPBELL (RESPONDENT). (DISMISSED).

29-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. FRANCIS D. LACE (RESPONDENT). (DISMISSED).

30-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. J. A. RHIND (RESPONDENT). (DISMISSED).

31-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. GRANT HORSEY (RESPONDENT). (DISMISSED).

32-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. HENRY N. BAWDEN (RESPONDENT). (DISMISSED).

33-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. TREVOR F. MOORE (RESPONDENT). (DISMISSED).

34-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. JOHN D. MINGAY (RESPONDENT). (DISMISSED).

35-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. W. C. THORNTON CRAN (RESPONDENT). (DISMISSED).

36-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. W. F. MCLEAN (RESPONDENT). (DISMISSED).

37-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. A. C. RYLEY (RESPONDENT). (DISMISSED).

38-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. ALAN R. MARCHMENT (RESPONDENT). (DISMISSED).

39-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. D. G. WALDON (RESPONDENT). (DISMISSED).

40-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. A. BRUCE MATTHEWS (RESPONDENT). (DISMISSED).

41-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. ARTHUR EGGLETON (RESPONDENT). (DISMISSED).

42-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. JOHN F. ELLIS (RESPONDENT). (DISMISSED).

43-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. J. E. BRENT (RESPONDENT). (DISMISSED).

44-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. HENRY N. R. JACKMAN (RESPONDENT). (DISMISSED).

45-72-PH: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. DR. LOUIS R. HARNICK (RESPONDENT). (DISMISSED).

COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)

DISPOSED OF DURING NOVEMBER

1583-71-U: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. GRANNY'S COUNTRY OVEN BAKERY LIMITED (RESPONDENT). (WITHDRAWN).

1648-71-U: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. GRANNY'S COUNTRY OVEN BAKERY LIMITED (RESPONDENT). (WITHDRAWN).

2231-72-U: ALFRED COMPTON (COMPLAINANT) V. INTERNATIONAL WOODWORKERS OF AMERICA LOCAL 2-700 (RESPONDENT). (DISMISSED).

2475-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. PEM-BROKE GENERAL HOSPITAL (RESPONDENT). (WITHDRAWN).

2502-72-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. AND CANADA, LOCAL 905 (COMPLAINANT) V. STANDARD BRANDS LTD. (RESPONDENT). (WITHDRAWN).

2514-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. CORPORATION OF THE COUNTY OF GREY (RESPONDENT). (WITHDRAWN).

2515-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. CORPORATION OF THE COUNTY OF GREY (RESPONDENT). (WITHDRAWN).

2531-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. COMMERCIAL CATERERS LIMITED (RESPONDENT). (DISMISSED).

2537-72-U: LEON FARLEY (COMPLAINANT) V. DAVID OLMSTEAD & LOCAL 1054 U.A.W. (RESPONDENTS). (WITHDRAWN).

2597-72-U: MILTON CLELAND (COMPLAINANT) V. PARISIAN LAUNDRY (RESPONDENT). (DISMISSED).

2641-72-U: VINCENZO CAMPOBASSO (COMPLAINANT) V. LAUNDRY DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION LOCAL 351 (RESPONDENT). (DISMISSED).

2642-72-U: VINCENZO CAMPOBASSO (COMPLAINANT) V. CENTENNIAL HOSPITAL LINEN SERVICES Co. (RESPONDENT). (DISMISSED).

2657-72-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. ATOMIK CONSTRUCTION COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

2689-72-U: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) V. SCOTT'S RESTAURANTS Co. LIMITED (RESPONDENT). (WITHDRAWN).

2722-72-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. DELTA 70 MANUFACTURING Co. (RESPONDENT). (WITHDRAWN).

2759-72-U: JOHN HOWARD (COMPLAINANT) V. JOHNSON CONTROLS (RESPONDENT). (WITHDRAWN).

2792-72-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. WEST BEND OF CANADA (RESPONDENT). (WITHDRAWN).

2825-72-U: MR. RICHARD J. YOUNG (COMPLAINANT) V. CANADIAN INSTITUTE FOR THE BLIND (RESPONDENT). (DISMISSED).

APPLICATIONS UNDER SECTION 39 (FORMERLY S. 35(A)) DISPOSED OF DURING

NOVEMBER

2596-72-M: JAN HANS SNOEK (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW), LOCAL 222 (RESPONDENT TRADE UNION) V. GENERAL MOTORS OF CANADA LIMITED (RESPONDENT EMPLOYER). (GRANTED).

2741-72-M: MISS EILEEN SKILLEN (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 1316 (RESPONDENT TRADE UNION) V. THE BOARD OF EDUCATION FOR THE CITY OF TORONTO (RESPONDENT EMPLOYER). (GRANTED).

[1972] 2 OLRB M.R. - PAGE 989.

APPLICATIONS UNDER SECTION 55 (FORMERLY S. 47A) DISPOSED OF DURING

NOVEMBER

2645-72-R: RETAIL CLERKS UNION, LOCAL 206, CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. LOBLAW GROCETERIAS Co. LIMITED (RESPONDENT). (DISMISSED).

2646-72-R: RETAIL CLERKS UNION, LOCAL 206, CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. LOBLAW GROCETERIAS CO. LIMITED (RESPONDENT). (DISMISSED).

JURISDICTIONAL DISPUTE

1943-72-JD: INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA, LOCAL 482 (COMPLAINANT) V. THE KINGSTON TYPOGRAPHICAL UNION No. 204, I.T.U., AND THE KINGSTON-WHIG-STANDARD COMPANY LIMITED (RESPONDENTS). (GRANTED).

[1972] 2 OLRB M.R. - PAGE 959.

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))

DISPOSED OF DURING NOVEMBER

1336-71-M: THE CANADIAN NATIONAL INSTITUTE FOR THE BLIND (APPLICANT) V. THE ONTARIO UNION OF BLIND AND SIGHTED MERCHANTS (RESPONDENT). (WITHDRAWN).

2341-72-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) V. DOUGLAS AIRCRAFT COMPANY OF CANADA LTD. (RESPONDENT). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 942.

2605-72-M: TEAMSTERS LOCAL UNION 989 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. HOFFMAN CONCRETE PRODUCTS (RESPONDENT). (DISMISSED).

2778-72-M: UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. DOMINION GLASS COMPANY LIMITED (RESPONDENT). (DISMISSED).

REFERENCE TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)

2606-72-M: STEAD & LINDSTROM LIMITED (EMPLOYER) V. LUMBER & SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (TRADE UNION). (DISMISSED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

2444-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. G. S. WARK LIMITED (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - LOCK-OUT

2129-72-U: MANSFIELD MATHIAS (APPLICANT) V. FORD MOTOR COMPANY OF CANADA, LIMITED (RESPONDENT). (REQUEST DENIED).

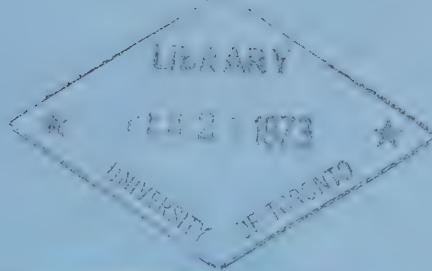
APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

(FORMERLY S. 65)

2293-72-U: WILLIAM STOUTLEY (COMPLAINANT) V. BARTENDERS & WAITERS UNION LOCAL 280 AND EL MOCAMBO TAVERNE (RESPONDENTS). (REQUEST DENIED).

[1972] 2 OLRB M.R. - PAGE 938.

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054



972) OLRB REP.

PAGES 991 - 1047

DECEMBER



ONTARIO

Monthly Report

ONTARIO LABOUR RELATIONS BOARD

CA 1482 P
154

ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE
ONTARIO LABOUR RELATIONS BOARD

CITED [1972] OLRB REP.

CASES REPORTED

	PAGE
AMERI-CANA MOTEL LTD. RE C.J.A.....	997
CIVIL SERVICE ASSOC. OF ONT. (INC.) RE BEN COFFEY.....	1016
COOK, ALLAN G., LTD. RE I.U.O.E., L. 793.....	991
EMPIRE PUBLIC HOUSE RE R.W.D.S.U., AFL:CIO:CLC.....	1001
HOLOPHANE CO., LTD. RE I.U.E., AFL, CIO, CLC AND GROUP OF EMPLOYEES.....	999
INDUSTRIAL-MINE INSTALLATIONS LTD. RE U.S.A. AND I.B.E.W., L. 1687 AND C.J.A. AND C.J.A., L. 2486 AND C.J.A.....	1029
LEVI STRAUSS OF CANADA, INC. RE A.C.W.A. AND GROUP OF EMPLOYEES.....	1041
MARSLAND ENGINEERING LTD. RE U.A.W.....	1009
MIRON, COMPAGNIE, LTEE RE T.C.W.H. L.U. NO. 91 AFF'L WITH THE T.C.W.H. AND C.L.G.W. L. 384.....	1034
NADEAU, LORENZO, RE LUMBER & SAWMILL WORKERS U. L. 2693 C.J.A. AND GROUP OF EMPLOYEES.....	1037
O.P.C.M., L. 117 RE UNITED PLASTERING CONTRACTORS' ASSOC.....	1012
PATCHOGUE PLYMOUTH HAWKESBURY MILLS, A DIVISION OF AMOCO CANADA PETROLEUM CO. LTD. RE I.W.A. AND PATCHOGUE PLYMOUTH EMPLOYEES ASSOC.....	1010
PLAYTEX LTD. RE U.T.W.A.....	1027
SQUARE D Co. CANADA LTD. RE U.E. AND GROUP OF EMPLOYEES.....	1036
TORONTO STAR LTD. AND TORONTO NEWSPAPER GUILD, L. 87.....	995
TORONTO WESTERN HOSPITAL AND C.U.G.E., PATRICK MURPHY, CYRIL JONES, ANTONIO MAONE, HERNANDO CORONELL, JOHN BOYD, ALFREDO MORELLI, EVA POMBO, MARIA CABRAL, IRENE BIMANN AND MICHAEL DYAL.....	1018
UNIVERSITY OF WESTERN ONT. RE C.U.P.E.....	1038

INDEX OF CASES

- BARGAINING RIGHTS - COLLECTIVE AGREEMENT - S1(1)(E) - EFFECT OF ABSENCE OF A TERM OF OPERATION CONTAINED IN AN AGREEMENT - S44(1) - MEMORANDUM OF AGREEMENT - EFFECT OF AN AGREEMENT TO ENTER AN AGREEMENT - WHETHER MINIMUM STANDARDS REQUIRED BY THE ACT SATISFIED.
- UNITED PLASTERING CONTRACTORS' ASSOCIATION v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, LOCAL 117..... 1012
- BARGAINING UNIT - JURISDICTION - CONSTITUTIONAL LAW - WHETHER EMPLOYEES RESIDING AND WORKING IN ONTARIO - EFFECT OF QUEBEC BASED COMPANY EXTENDING OPERATIONS INTO ONTARIO - WHETHER UNIT FORMED IN OTTAWA SEPARATE AND INDEPENDENT OF QUEBEC OPERATION.
- TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA v. COMPAGNIE MIRON LTEE v. UNITED CEMENT, LIME & GYPSUM WORKERS INTERNATIONAL UNION LOCAL 384..... 1034
- BARGAINING UNIT - NON-PROFESSIONAL LIBRARY UNIT DETERMINED - EFFECT OF PAST BOARD DECISIONS - WHETHER BOARD BOUND BY STARE DECISIS - EFFECT OF UNDERMINING BOARD PAST DECISIONS.
- CANADIAN UNION OF PUBLIC EMPLOYEES v. THE UNIVERSITY OF WESTERN ONTARIO..... 1038
- COLLECTIVE AGREEMENT - BARGAINING RIGHTS - S1(1)(E) - EFFECT OF ABSENCE OF A TERM OF OPERATION CONTAINED IN AN AGREEMENT - S44(1) - MEMORANDUM OF AGREEMENT - EFFECT OF AN AGREEMENT TO ENTER AN AGREEMENT - WHETHER MINIMUM STANDARDS REQUIRED BY THE ACT SATISFIED.
- UNITED PLASTERING CONTRACTORS' ASSOCIATION v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, LOCAL 117..... 1012
- CONSENT TO PROSECUTE - UNLAWFUL STRIKE - S1(1)(M) - EFFECT OF SCHEDULED HOLIDAY AT MATERIAL TIME OF UNLAWFUL STRIKE - WHETHER A PRIMA FACIE CASE - EFFECT OF SUSPENSION OF EMPLOYEES BY THE EMPLOYER - WHETHER EMPLOYEES MAY BE DEEMED ON STRIKE SUBSEQUENT TO SUSPENSION AND DISCHARGE - S90 - BOARD DISCRETION - ONUS ON UNION OFFICERS OVER RANK AND FILE EMPLOYEES - IMPUTING KNOWLEDGE OF UNLAWFUL ACTIVITY - WHETHER ONUS DISCHARGED - EFFECT OF EMPLOYER EXACTING ULTIMATE PENALTY OF DISCHARGE - WHETHER DISCRETION NOT TO ISSUE CONSENT APPLIES TO UNION AND PRESIDENT.

THE TORONTO WESTERN HOSPITAL v. CANADIAN UNION OF GENERAL EMPLOYEES, PATRICK MURPHY, CYRIL JONES, ANTONIO MAONE, HERNANDO CORONELL, JOHN BOYD, ALFREDO MORELLI, EVA POMBO, MARIA CABRAL, IRENE BIMANN AND MICHAEL DYAL..... 1018

CONSTITUTIONAL LAW - BARGAINING UNIT - JURISDICTION - WHETHER EMPLOYEES RESIDING AND WORKING IN ONTARIO - EFFECT OF QUEBEC BASED COMPANY EXTENDING OPERATIONS INTO ONTARIO - WHETHER UNIT FORMED IN OTTAWA SEPARATE AND INDEPENDENT OF QUEBEC OPERATION.

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS WAREHOUSEMEN AND HELPERS OF AMERICA v. COMPAGNIE MIRON LTEE v. UNITED CEMENT, LIME & GYPSUM WORKERS INTERNATIONAL UNION LOCAL 384..... 1034

CONSTRUCTION INDUSTRY - S1(1)(F) - "CONSTRUCTION INDUSTRY" - RESPONDENT PRIMARILY IN THE HOTEL BUSINESS - EFFECT OF BUILDING ON ADDITIONAL HOTEL - WHETHER ENGAGED IN THE CONSTRUCTION INDUSTRY WITHIN THE MEANING OF THE ACT.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA v. AMERI-CANA MOTEL LTD..... 997

EMPLOYEES - S1(3)(B) - "LEAD HAND" - EFFECT OF SUPERVISORY DUTIES BEING THE LIKE NATURE OF - CONFIDENTIAL INFORMATION - WHETHER IT PERTAINS TO LABOUR RELATIONS - EFFECT OF RARE EXPOSURE TO CONFIDENTIAL INFORMATION RELATING TO LABOUR RELATIONS.

THE INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, AFL, CIO, CLC v. THE HOLOPHANE COMPANY, LIMITED v. GROUP OF EMPLOYEES..... 999

JURISDICTION - CONSTITUTIONAL LAW - BARGAINING UNIT - WHETHER EMPLOYEES RESIDING AND WORKING IN ONTARIO - EFFECT OF QUEBEC BASED COMPANY EXTENDING OPERATIONS INTO ONTARIO - WHETHER UNIT FORMED IN OTTAWA SEPARATE AND INDEPENDENT OF QUEBEC OPERATION.

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA v. COMPAGNIE MIRON LTEE v. UNITED CEMENT, LIME & GYPSUM WORKERS INTERNATIONAL UNION LOCAL 384..... 1034

IV

PETITION - EFFECT OF A VALIED PETITION BEING THE PRODUCT OF A
TAINTED PETITION - WHETHER SECOND PETITION AFFECTED AND
UNDERMINED BY THE FIRST PETITION.

AMALGAMATED CLOTHING WORKERS OF AMERICA v. LEVI STRAUSS
OF CANADA, INC. v. GROUP OF EMPLOYEES..... 1041

PETITION - ORIGATION - EFFECT OF SON OF RESPONDENT OWNER INI-
TIATING AND CIRCULATING STATEMENT OF DESIRE - WHETHER PE-
TITION URGED AT REQUEST OF EMPLOYEES - EFFECT OF ADVICE
OF A FRIEND ENGAGED IN SAME UNDERTAKING AS RESPONDENT -
WHETHER JUSTIFIABLE CAUSE TO BE APPREHENSIVE ABOUT JOB
SECURITY.

LUMBER AND SAWMILL WORKERS UNION LOCAL 2693 OF THE UNITED
BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA v. LORENZO
NADEAU v. GROUP OF EMPLOYEES..... 1037

PRACTICE - EXAMINERS INQUIRY - WHETHER A PARTY MAY BE COMPELLED
TO AGREE TO A REPRESENTATIVE OF A GROUP OF EMPLOYEES TO BE
EXAMINED - WHETHER THE BOARD TO DIRECT ON INTERIM REPORT
BE ISSUED.

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA
(UE) v. SQUARE D COMPANY CANADA LIMITED v. GROUP OF EM-
PLOYEES..... 1036

PRACTICE - REPRESENTATION VOTE - EFFECT OF FAILURE OF ALL EMPLOYEES
TO RECEIVE NOTICE DIRECTING A REPRESENTATION VOTE - WHETHER
EMPLOYEES DENIED FULL ELECTORAL PROCESS - EFFECT OF NOT BEING
EXPOSED TO PROPAGANDA BY ONSET OF THE "SILENT PERIOD" - WHETHER
BOARD WILL DIRECT ON ADDITIONAL VOTE.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v.
ALLAN G. COOK LIMITED..... 991

RELATED EMPLOYER - S1(4) - MISCHIEF OF SECTION - WHETHER WILL
BE APPLIED ON A "PIECEMEAL" BASIS - EFFECT OF APPLYING
PROVISION AT A TIME WHEN COLLECTIVE AGREEMENT IS IN FORCE
- WHETHER BOARD WILL APPLY PROVISION IN THE CIRCUMSTANCES.

UNITED STEELWORKERS OF AMERICA v. INDUSTRIAL-MINE IN-
STALLATIONS LIMITED v. INTERNATIONAL BROTHERHOOD OF ELEC-
TRICAL WORKERS, LOCAL 1687 v. UNITED BROTHERHOOD OF CAR-
PENTERS AND JOINERS OF AMERICA v. UNITED BROTHERHOOD OF
CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 v. UNITED
BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA..... 1029

REPRESENTATION VOTE - EFFECT OF DEFACING BOARD NOTICE - REMEDY
BY WAY OF CONSENT TO PROSECUTE THE PERPETRATOR - EFFECT
OF FAILURE TO IDENTIFY - WHETHER SUFFICIENT EVIDENCE TO
CAUSE A SECOND VOTE TO BE DIRECTED.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AG-
RICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) v. MARSLAND
ENGINEERING LIMITED.....

1009

REPRESENTATION VOTE - PRACTICE - EFFECT OF FAILURE OF ALL EMPLOYEES
TO RECEIVE NOTICE DIRECTING A REPRESENTATION VOTE - WHETHER
EMPLOYEES DENIED FULL ELECTORAL PROCESS - EFFECT OF NOT BEING
EXPOSED TO PROPAGANDA BY ONSET OF THE "SILENT PERIOD" - WHETHER
BOARD WILL DIRECT ON ADDITIONAL VOTE.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v.
ALLAN G. COOK LIMITED.....

991

REPRESENTATION VOTE - S56 - EXPRESSION OF EMPLOYER'S VIEW -
WHETHER VIOLATION OF OR ABUSE OF FREEDOM - WHETHER UNDUE
INFLUENCE - PRESUMPTION OF EMPLOYER'S ATTITUDE TOWARDS
UNION REPRESENTATION - EFFECT OF CORRESPONDENCE AFFIRM-
ING ATTITUDE - WHETHER CONTENTS WERE EXPRESSION OF VIEWS.

UNITED TEXTILE WORKERS OF AMERICA v. PLAYTEX LTD.....

1027

REPRESENTATION VOTE - TRADE UNION - S7(4) - EFFECT OF FAILURE OF
APPLICANT TO ACQUIRE 50% OF BARGAINING UNIT AS MEMBERS -
WHETHER A SECOND VOTE WILL SERVE A USEFUL PURPOSE - S1(1)(N)
- EFFECT OF RATIFICATION OF CONSTITUTION AND MEMBERSHIP
APPLICATIONS RECEIVED AND PROCESSED AT SOME ORGANIZATIONAL
MEETING - WHETHER DEEMED TO HAVE TAKEN PLACE SIMULTANEOUSLY.

INTERNATIONAL WOODWORKERS OF AMERICA v. PATCHOGUE PLYMOUTH
HAWKESBURY MILLS, A DIVISION OF AMOCO CANADA PETROLEUM COM-
PANY LTD. v. PATCHOGUE PLYMOUTH EMPLOYEES ASSOCIATION.....

1010

SALE OF A BUSINESS - S55(6)(D) - WHETHER BOARD WILL AMEND BAR-
GAINING UNITS UPON THE MERGER OF TWO PRE-EXISTING UNITS
AS A RESULT OF A SALE - WHETHER THE MATTER IS ONE FOR
NEGOTIATION - S95(2) - WHETHER BOARD WILL MAKE APPROPRI-
ATE EXCLUSIONS FROM THE BARGAINING UNIT - EFFECT OF IM-
PROPER RECOURSE TO S55.

TORONTO STAR LIMITED v. TORONTO NEWSPAPER GUILD, LOCAL
87.....

995

S79 - DISCHARGE - S58 - WHETHER FOR UNION ACTIVITY IN PARTICIPATING IN ORGANIZATIONAL CAMPAIGN - WHETHER MOTIVATING FACTOR - EFFECT OF "DRINKING ACTIVITIES" ON THE JOB - WHETHER AN APPROPRIATE EXCUSE.

RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC
v. EMPIRE PUBLIC HOUSE.....

1001

S79 - WHETHER DISCHARGE FOR CONTRAVENTION OF L.R.A. - WHETHER COMPLAINT IN THE NATURE OF AN APPEAL FROM A DECISION OF A SOLE ARBITRATOR UNDER A COLLECTIVE AGREEMENT - S79(4) - WHETHER BOARD TO DIRECT A HEARING.

BEN COFFEY v. THE CIVIL SERVICE ASSOCIATION OF ONTARIO
(INC.)....

1016

TRADE UNION - REPRESENTATION VOTE - S7(4) - EFFECT OF FAILURE OF APPLICANT TO ACQUIRE 50% OF BARGAINING UNIT AS MEMBERS - WHETHER A SECOND VOTE WILL SERVE A USEFUL PURPOSE - S1(1)(N) - EFFECT OF RATIFICATION OF CONSTITUTION AND MEMBERSHIP APPLICATIONS RECEIVED AND PROCESSED AT SOME ORGANIZATIONAL MEETING - WHETHER DEEMED TO HAVE TAKEN PLACE SIMULTANEOUSLY.

INTERNATIONAL WOODWORKERS OF AMERICA v. PATCHOGUE PLYMOUTH
HAWKESBURY MILLS, A DIVISION OF AMOCO CANADA PETROLEUM COMPANY LTD. v. PATCHOGUE PLYMOUTH EMPLOYEES ASSOCIATION.....

1010

UNLAWFUL STRIKE - CONSENT TO PROSECUTE - S1(1)(M) - EFFECT OF SCHEDULED HOLIDAY AT MATERIAL TIME OF UNLAWFUL STRIKE - WHETHER A PRIMA FACIE CASE - EFFECT OF SUSPENSION OF EMPLOYEES BY THE EMPLOYER - WHETHER EMPLOYEES MAY BE DEEMED ON STRIKE SUBSEQUENT TO SUSPENSION AND DISCHARGE - S90 - BOARD DISCRETION - ONUS ON UNION OFFICERS OVER RANK AND FILE EMPLOYEES - IMPUTING KNOWLEDGE OF UNLAWFUL ACTIVITY - WHETHER ONUS DISCHARGED - EFFECT OF EMPLOYER EXACTING ULTIMATE PENALTY OF DISCHARGE - WHETHER DISCRETION NOT TO ISSUE CONSENT APPLIES TO UNION AND PRESIDENT.

THE TORONTO WESTERN HOSPITAL v. CANADIAN UNION OF GENERAL
EMPLOYEES, PATRICK MURPHY, CYRIL JONES, ANTONIO MAONE,
HERNANDO CORONELL, JOHN BOYD, ALFREDO MORELLI, EVA POMBO,
MARIA CABRAL, IRENE BIMANN AND MICHAEL DYAL.....

1018

8. IN AN APPLICATION UNDER SECTION 39 OF THE ACT THE BOARD CANNOT MAKE ITS DETERMINATION ON THE INTELLECTUAL INTEGRITY OF THE REASONING BEHIND THE BELIEF EXPRESSED BY THE APPLICANT. THE ONLY MATTER THAT OUGHT TO CONCERN THE BOARD IS WHETHER THE APPLICANT'S OBJECTION IS BASED ON A SINCERE RELIGIOUS CONVICTION OR BELIEF.

9. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD IS SATISFIED THAT THE APPLICANT IS AN EMPLOYEE OF THE RESPONDENT EMPLOYER WHO, BECAUSE OF HER RELIGIOUS CONVICTION OR BELIEF, OBJECTS TO CONTINUING TO BE A MEMBER OF THE RESPONDENT TRADE UNION AND OBJECTS TO THE PAYING OF UNION DUES OR OTHER ASSESSMENTS TO THE RESPONDENT TRADE UNION.

10. THE BOARD THEREFORE ORDERS AND DIRECTS THAT THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT EMPLOYER AND THE RESPONDENT TRADE UNION WHICH ARE OF THE TYPE MENTIONED IN ARTICLE 38(1)(A) OF THE ACT DO NOT APPLY TO THE APPLICANT AND ACCORDINGLY THE APPLICANT IS NOT REQUIRED TO BE OR CONTINUE TO BE A MEMBER OF THE RESPONDENT TRADE UNION OR TO PAY ANY DUES, FEES OR ASSESSMENTS TO THE TRADE UNION, PROVIDED THAT AMOUNTS EQUAL TO ANY DUES, FEES OR OTHER ASSESSMENTS ARE PAID BY THE APPLICANT TO OR ARE REMITTED BY THE RESPONDENT EMPLOYER TO A CHARITABLE ORGANIZATION MUTUALLY AGREED UPON BY THE APPLICANT AND THE RESPONDENT TRADE UNION.

11. HOWEVER, IF THE APPLICANT AND THE RESPONDENT TRADE UNION FAIL TO AGREE ON SUCH CHARITABLE ORGANIZATION, THE BOARD, UPON THE REQUEST OF EITHER THE APPLICANT OR THE RESPONDENT TRADE UNION, WILL DESIGNATE, PURSUANT TO THE PROVISIONS OF SECTION 39(1) OF THE ACT, A CHARITABLE ORGANIZATION REGISTERED AS SUCH IN CANADA UNDER PART I OF THE INCOME TAX ACT (CANADA).

2022-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) v. ALLAN G. COOK LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: H. A. HERRON AND S. SOUCY FOR THE APPLICANT; W. G. PHELPS AND J. O'CALLAGHAN FOR THE RESPONDENT; ANTHONY A. PECKHAM FOR A GROUP OF EMPLOYEES.

DECISION OF VICE-CHAIRMAN R. A. FURNESS AND BOARD MEMBER H.J.F. ADE:
DECEMBER 1, 1972.

1. IN A DECISION DATED JUNE 9, 1972, THE BOARD DIRECTED THE TAKING OF A REPRESENTATION VOTE IN THIS MATTER.

2. THIS REPRESENTATION VOTE WAS CONDUCTED BY THE BOARD ON JULY 7, 1972. THE LAST DATE FOR FILING OBJECTIONS TO THE REPRESENTATION VOTE WAS JULY 14, 1972.

...

4. THE OTHER THREE DOCUMENTS BEAR SUBSTANTIALLY THE SAME HEADING IN EACH CASE. THIS HEADING READS:

"WE THE UNDERSIGNED EMPLOYEES OF ALLAN G. COOK LIMITED PARTICIPATED IN A VOTE FOR THE CERTIFICATION OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 ON FRIDAY, JULY 7, 1972.

WE ARE NOT SATISFIED IN THE MANNER IN WHICH THE VOTE WAS CONDUCTED AND WISH TO REGISTER OUR VOTE AGAINST THE CERTIFICATION OF THIS UNION."

5. THE BOARD LISTED THIS MATTER FOR HEARING. AT THE HEARING, COUNSEL FOR THE EMPLOYEES, WHO OBJECTED TO THE MANNER IN WHICH THE REPRESENTATION VOTE WAS CONDUCTED, INFORMED THE BOARD THAT THESE EMPLOYEES HAD NOT RECEIVED NOTICE OF THE REPRESENTATION VOTE FROM THE BOARD.

6. IT WAS AGREED BY ALL THE PARTIES BEFORE THE BOARD THAT THE RESPONDENT HAD POSTED THREE COPIES OF THE FORM 42, NOTICE OF TAKING OF VOTE BY THE ONTARIO LABOUR RELATIONS BOARD. THESE NOTICES WERE POSTED AT, (1) THE RESPONDENT'S SHOP ON HIGHWAY 90, WEST OF BARRIE, (2) THE RESPONDENT'S ASPHALT PLANT ON HIGHWAY 90, WEST OF BARRIE, AND (3) THE RESPONDENT'S INSIDE GARAGE AT COLDWATER.

7. ROBERT HALLETT, CLEMENT JOLIE, DOUGLAS LIPPETT, EARL LEIGH, GORDON McLEAN AND MORLEY MARSHALL, OBJECTING EMPLOYEES OF THE RESPONDENT WHO ARE IN THE BARGAINING UNIT AND WHO WERE ELIGIBLE TO VOTE IN THE REPRESENTATION VOTE, GAVE EVIDENCE BEFORE THE BOARD.

8. LEIGH TESTIFIED THAT HE WORKED IN THE INSIDE GARAGE AS A HEAVY DUTY MECHANIC AND THAT HE HAD SEEN THE NOTICE OF THE REPRESENTATION VOTE ABOUT A WEEK BEFORE IT WAS CONDUCTED. HE ALSO INFORMED THE BOARD THAT HE HAD VOTED IN THE REPRESENTATION VOTE. IT IS QUITE CLEAR THAT LEIGH'S OBJECTIONS TO THE REPRESENTATION VOTE RELATE TO THE RESULT OF IT AND NOT TO ANY LACK OF NOTICE TO HIM.

9. HOWEVER, THE OTHER FIVE PERSONS REFERRED TO IN PARAGRAPH SEVEN HEREIN TESTIFIED THAT BY REASON OF THE NATURE OF THEIR JOBS, THEY NEITHER HAD ANY CAUSE TO VISIT NOR DID THEY ACTUALLY VISIT THE THREE LOCATIONS WHERE THE NOTICE OF VOTE WAS POSTED. THESE FIVE PERSONS WORKED IN VARIOUS LOCATIONS AND ON VARIOUS JOB SITES SEPARATE AND APART FROM OTHER EMPLOYEES WHO WORKED AT THE THREE LOCATIONS WHERE THE THREE COPIES OF THE FORM 42 WERE POSTED. HALLETT, LIPPETT, McLEAN AND MARSHALL TESTIFIED THAT THEY VOTED IN THE REPRESENTATION VOTE. HALLETT, JOLIE, LIPPETT, McLEAN AND MARSHALL GAVE EVIDENCE THAT THEY HAD SIGNED THE DOCUMENTS IN OPPOSITION TO THE MANNER IN WHICH THE REPRESENTATION VOTE WAS CONDUCTED.

10. HALLETT INFORMED THE BOARD THAT HE KNEW NOTHING OF THE REPRESENTATION VOTE UNTIL TOLD ABOUT IT ON THE DAY OF THE VOTE BY HIS FOREMAN. HE STATED THAT HE WOULD HAVE LIKED TO HAVE HAD AN OPPORTUNITY TO DISCUSS THE VOTE WITH OTHER EMPLOYEES. JOLIE TESTIFIED THAT HE KNEW NOTHING OF THE REPRESENTATION VOTE UNTIL TOLD ABOUT IT THE DAY BEFORE BY HIS FOREMAN. LIPPETT GAVE EVIDENCE THAT HE FIRST HEARD ABOUT THE REPRESENTATION VOTE FROM HIS FOREMAN AT 3.00 P.M. OF THE DAY OF VOTE. MCLEAN TESTIFIED THAT HE KNEW NOTHING OF THE REPRESENTATION VOTE UNTIL THE MORNING OF THE DAY ON WHICH IT WAS HELD. MARSHALL GAVE EVIDENCE THAT HE KNEW NOTHING OF THE REPRESENTATION VOTE UNTIL TOLD ABOUT IT BY HIS FOREMAN ON THE DAY BEFORE THE VOTE.

11. THE EVIDENCE GIVEN BY THE EMPLOYEES REFERRED TO IN PARAGRAPH SEVEN HEREIN WAS NOT CONTRADICTED BY ANY OTHER EVIDENCE PRESENTED TO THE BOARD. IT APPEARS FROM THE EVIDENCE BEFORE US THAT HALLETT, JOLIE, LIPPETT AND MARSHALL HAD HEARD ABOUT THE REPRESENTATION VOTE FROM THEIR FOREMAN BECAUSE THE RESPONDENT WAS SHUTTING DOWN ITS OPERATIONS EARLY ON THE DAY OF THE REPRESENTATION VOTE TO ENABLE THE EMPLOYEES TO VOTE.

12. THE REPRESENTATION VOTE WAS CONDUCTED ON FRIDAY, JULY 7, 1972. IN THE FORM 42, NOTICE OF TAKING OF VOTE BY THE ONTARIO LABOUR RELATIONS BOARD, THE REGISTRAR DIRECTED "ALL INTERESTED PERSONS TO REFRAIN AND DESIST FROM PROPAGANDA AND ELECTIONEERING FROM MIDNIGHT OF MONDAY, JULY 3, 1972, UNTIL THE VOTE IS TAKEN."

13. COUNSEL FOR THE OBJECTING EMPLOYEES REQUESTED A NEW REPRESENTATION VOTE ON THE GROUNDS THAT THE EMPLOYEES, WHO TESTIFIED BEFORE THE BOARD, WERE NOT SATISFIED WITH THE MANNER IN WHICH THE REPRESENTATION VOTE WAS CONDUCTED, AND ALSO WERE NOT GIVEN NOTICE BY THE BOARD OF THE REPRESENTATION VOTE. HE EMPHASIZED THAT THESE OBJECTING EMPLOYEES DID NOT HAVE ADEQUATE NOTICE OF THE REPRESENTATION VOTE AND THAT WHEN THEY HEARD ABOUT THE REPRESENTATION VOTE, THE RESTRICTION ON PROPAGANDA AND ELECTIONEERING WAS ALREADY IN EFFECT. HE REFERRED TO THE FACT THAT THE RESULT OF THE VOTE WAS CLOSE AND THAT THE RESULT COULD HAVE BEEN QUITE DIFFERENT IF THE OBJECTING EMPLOYEES HAD RECEIVED ADEQUATE NOTICE FROM THE BOARD.

14. COUNSEL FOR THE RESPONDENT STATED THAT IF IT IS REQUIRED TO BARGAIN WITH THE APPLICANT, THEN THE RESPONDENT IS CONCERNED WHETHER THE APPLICANT TRULY REPRESENTS THE EMPLOYEES. COUNSEL FOR THE RESPONDENT AGREED WITH COUNSEL FOR THE OBJECTING EMPLOYEES THAT THESE PERSONS HAD NOT RECEIVED ADEQUATE NOTICE OF THE REPRESENTATION VOTE. THE REPRESENTATIVE OF THE APPLICANT STATED THAT THE OBJECTING EMPLOYEES HAD HAD TIME TO VOTE AND OPPOSED THE TAKING OF A NEW REPRESENTATION VOTE, SINCE IT WOULD NOT, IN HIS VIEW, TOUCH THE ROOT OF THE MATTER.

15. IN OUR VIEW, IT IS NOT OPEN TO THE RESPONDENT TO RAISE OBJECTIONS TO THE ADEQUACY OF THE NOTICE OF THE REPRESENTATION VOTE TO THE OBJECTING EMPLOYEES, BECAUSE THE RESPONDENT WAS A PARTY TO THE ARRANGEMENTS FOR THE REPRESENTATION VOTE WHICH GIVE RISE TO THE PRESENT OBJECTIONS.

16. WHILE IT IS TRUE THAT ALL OF THE OBJECTING EMPLOYEES, WITH THE EXCEPTION OF JOLIE, TESTIFIED THAT THEY HAD VOTED IN THE REPRESENTATION VOTE, THESE OBJECTING EMPLOYEES (WITH THE EXCEPTION OF LEIGH) NEVER RECEIVED NOTICE OF THE REPRESENTATION VOTE FROM THE BOARD. THE NOTICE THAT THESE OBJECTING EMPLOYEES DID RECEIVE WAS FORTUITOUS AND EXTREMELY SHORT. EVEN IF THESE OBJECTING EMPLOYEES HAD RECEIVED THE NOTICE OF THE REPRESENTATION VOTE FROM THE BOARD AT THE TIME THEY RECEIVED IT FROM THEIR FOREMEN, THEY WOULD HAVE BEEN PRECLUDED FROM FULLY PARTICIPATING IN THE ELECTION PROCESS SINCE SUCH NOTICE WOULD HAVE BEEN RECEIVED SUBSEQUENT TO THE ONSET OF "QUIET PERIOD" (I.E., THE DATE FROM WHICH ALL INTERESTED PARTIES ARE DIRECTED TO REFRAIN AND DESIST FROM PROPAGANDA AND ELECTIONEERING UNTIL THE VOTE IS TAKEN).

17. THESE FIVE OBJECTING EMPLOYEES, THROUGH NO FAULT OF THEIR OWN, DID NOT RECEIVE NOTICE OF THE REPRESENTATION VOTE FROM THE BOARD. IN ALL OF THE CIRCUMSTANCES, THE NOTICE OF THE REPRESENTATION VOTE WHICH THESE FIVE OBJECTING EMPLOYEES DID RECEIVE WAS INADEQUATE.

18. HAVING REGARD TO THE FOREGOING, WE DIRECT THAT THE REPRESENTATION VOTE TAKEN ON JULY 7, 1972, BE SET ASIDE. WE FURTHER DIRECT THAT A NEW REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

19. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

20. THE RESPONDENT IS DIRECTED TO POST THE FORM 42 PROMPTLY UPON RECEIPT OF SAME IN SUCH CONSPICUOUS LOCATIONS THAT THEY WILL BE SEEN AND READ BY ALL ELIGIBLE VOTERS.

21. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER E. BOYER: DECEMBER 1, 1972.

1. THE DECISION OF THE MAJORITY CAN HAVE SERIOUS REPERCUSSIONS ON THE LONG ESTABLISHED PROCEDURES OF THE ONTARIO LABOUR RELATIONS BOARD RELATING TO REPRESENTATION VOTES AND FOR THIS REASON I FIND IT NECESSARY TO PREPARE A DISSENTING DECISION, WHICH WILL REQUIRE A CAREFUL REVIEW OF ALL THE EVIDENCE IN THIS MATTER TOGETHER WITH THE BOARD'S PAST JURISPRUDENCE IN LIKE SITUATIONS.

2. SINCE THIS CASE WAS FILED MAY 23, 1972 AND IT IS NOW SOME SIX MONTHS LATER, IN ORDER TO EXPEDITE THE VOTE, I THEREFORE DISSENT FROM THE DECISION OF THE MAJORITY WITH MY REASONS TO FOLLOW AT A LATER DATE.

1634-71-R: TORONTO STAR LIMITED (APPLICANT) V. TORONTO NEWSPAPER GUILD, LOCAL 87 (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: DONALD J. M. BROWN, GLENN LESLIE AND C. DAVIES FOR THE APPLICANT; MARTIN L. LEVINSON AND FRED JONES FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 5, 1972.

1. THE NAME "THE TORONTO NEWSPAPER GUILD LOCAL 87 OF THE NEWSPAPER GUILD" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "TORONTO NEWSPAPER GUILD, LOCAL 87".

2. THIS IS AN APPLICATION MADE UNDER SECTION 55(6) OF THE LABOUR RELATIONS ACT. THE APPLICANT APPLIES TO THE BOARD UNDER SECTION 55(6) OF THE ACT WITH RESPECT TO THE BARGAINING UNIT DEFINED IN A COLLECTIVE BARGAINING AGREEMENT BETWEEN THE TORONTO STAR LIMITED (HEREINAFTER REFERRED TO AS "APPLICANT") AND THE TORONTO NEWSPAPER GUILD, LOCAL 87 (HEREINAFTER REFERRED TO AS "LOCAL 87").

3. THE APPLICANT SEEKS THE "AMENDMENT OF THE BARGAINING UNIT IN THE CURRENT COLLECTIVE BARGAINING AGREEMENT BETWEEN THE APPLICANT AND [LOCAL 87] TO PROVIDE ADDITIONAL EXCLUSIONS" FROM THE BARGAINING UNIT.

4. IN ITS APPLICATION, THE APPLICANT CONTENDED THAT ON OR ABOUT OCTOBER 22, 1971, IT PURCHASED PART OF THE BUSINESS OF THE TELEGRAM PUBLISHING CO. LIMITED (HEREINAFTER REFERRED TO AS THE "TELEGRAM"), INCLUDING, INTER ALIA, THE GOODWILL AND THE RIGHTS TO USE THE PLANT FORMERLY USED BY THE TELEGRAM FOR A TWO YEAR PERIOD COMMENCING NOVEMBER 1, 1971. AT THE HEARING, THE APPLICANT TOOK THE POSITION THAT THE SALE CONSISTED OF THE PURCHASE OF THE TELEGRAM'S CIRCULATION LIST, GOODWILL, SOME ASSETS AND THE LEASING OF THE TELEGRAM'S PRODUCTION FACILITY ON FRONT STREET IN TORONTO FOR TWO YEARS.

5. AT THE HEARING, THE APPLICANT STATED THAT AFTER THE SALE SOME 450 FORMER EMPLOYEES OF THE TELEGRAM WERE TAKEN ON AS EMPLOYEES OF THE APPLICANT, AND, THAT OF THIS NUMBER APPROXIMATELY 174 ARE COVERED BY THE CURRENT COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND LOCAL 87. LOCAL 87 AGREED WITH THESE FACTS AS STATED BY THE APPLICANT AND AS SET FORTH IN THIS PARAGRAPH.

6. THE APPLICANT HAS INTERMINGLED THESE NEW EMPLOYEES WITH ITS FORMER EMPLOYEES AND PRESENTLY UTILIZES PRODUCTION FACILITIES IN TWO LOCATIONS, NAMELY YONGE STREET AND FRONT STREET IN TORONTO. THESE NEW EMPLOYEES WHO ARE COVERED BY THE CURRENT COLLECTIVE AGREE-

MENT BETWEEN THE APPLICANT AND LOCAL 87 WERE FORMERLY COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE TELEGRAM AND LOCAL 87.

7. THE AMENDMENT OF THE CURRENT COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND LOCAL 87 (EFFECTIVE FROM JANUARY 1, 1971 UNTIL DECEMBER 31, 1972) REQUESTED BY THE APPLICANT, CONSISTS OF CERTAIN ADDITIONAL EXCLUSIONS FROM THE PRESENT BARGAINING UNIT. AT THE PRESENT TIME, THIS CURRENT COLLECTIVE AGREEMENT COVERS APPROXIMATELY 1500 EMPLOYEES AND LISTS BETWEEN 120 AND 150 EXCLUSIONS. SOME OF THESE EXCLUSIONS PROPOSED BY THE APPLICANT CONSIST OF NEW CLASSIFICATIONS OF PERSONNEL, AND, IN SOME INSTANCES, THE PROPOSED EXCLUSIONS CONSIST OF NUMERICAL ADDITIONS TO EXISTING EXCLUDED CLASSIFICATIONS.

8. THE APPLICANT CLAIMS THAT THESE ADDITIONAL EXCLUSIONS ARE MADE NECESSARY BY THE USE OF THE TWO PRODUCTION FACILITIES INSTEAD OF ONE AND THAT THE INCREASE IN BUSINESS ACCRUING TO THE APPLICANT HAS LED TO A SIGNIFICANT REORGANIZATION AND RATIONALIZATION OF ITS WORK FORCE.

9. THE APPLICANT CLAIMS THAT THE ADDITIONAL PERSONS IT SEEKS TO EXCLUDE FROM THE BARGAINING UNIT EXERCISE MANAGERIAL FUNCTIONS AND ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS.

10. THE RELIEF REQUESTED BY THE APPLICANT IS STRONGLY OPPOSED BY LOCAL 87. IT IS THE POSITION OF LOCAL 87 THAT A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 55(1) OF THE LABOUR RELATIONS ACT HAS NOT OCCURRED. LOCAL 87 TAKES THE POSITION THAT THE PRESENT APPLICATION OUGHT TO BE DISMISSED AND THAT THE MATTERS PRESENTLY BEFORE THE BOARD MIGHT PROPERLY BE BROUGHT UNDER THE PROVISIONS OF SECTION 95(2) OF THE LABOUR RELATIONS ACT AND/OR THAT THE PARTIES USE THE PROCESS OF COLLECTIVE BARGAINING TO RESOLVE THE DIFFERENCES BETWEEN THEM WITH RESPECT TO THESE PROPOSED EXCLUSIONS.

11. THE APPLICANT AND LOCAL 87 AGREE THAT THEY HAVE BEEN NEGOTIATING FOR SEVERAL MONTHS WITH RESPECT TO THESE PROPOSED EXCLUSIONS AND THAT THEY HAVE, AS YET, MADE VERY LITTLE PROGRESS. THE APPLICANT AND LOCAL 87 ALSO AGREE THAT COLLECTIVE BARGAINING IS ABOUT TO COMMENCE WITH RESPECT TO A NEW COLLECTIVE AGREEMENT BETWEEN THEM.

12. LOCAL 87 ARGUES THAT SECTION 55(6)(d) OUGHT NOT TO BE INTERPRETED SO AS TO PROVIDE THE RELIEF REQUESTED BY THE APPLICANT. LOCAL 87 ARGUES THAT SECTION 55(6) OUGHT TO COME INTO PLAY ONLY WHERE THERE IS SOME DISPUTE BETWEEN MORE THAN ONE TRADE UNION AS TO WHICH IS THE BARGAINING AGENT, AND, THAT IT OUGHT NOT TO BE USED IN THE CIRCUMSTANCES OF THIS APPLICATION WHERE ONE OF THE PARTIES SEEKS TO UNDERMINE THE PROCESS OF COLLECTIVE BARGAINING.

13. EVEN ASSUMING, WITHOUT DECIDING, THAT A SALE OF A BUSINESS OR PART OF A BUSINESS HAS OCCURRED BETWEEN THE TELEGRAM AND THE APPLI-

CANT WITHIN THE MEANING OF SECTION 55(1) OF THE LABOUR RELATIONS ACT, THE PARTIES ARE IN AGREEMENT THAT THE FORMER EMPLOYEES OF THE TELEGRAM WHO BECAME EMPLOYEES OF THE APPLICANT ARE COVERED BY THE CURRENT COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND LOCAL 87. THERE IS, THEREFORE, NO DISPUTE BETWEEN THE PARTIES TO THIS APPLICATION CONCERNING WHETHER LOCAL 87 IS THE BARGAINING AGENT OF THE EMPLOYEES OF THE APPLICANT WHO WERE FORMERLY EMPLOYEES OF THE TELEGRAM.

14. THERE IS NO NECESSITY IN THE CIRCUMSTANCES OF THIS APPLICATION TO RECONCILE TWO OR MORE CONFLICTING BARGAINING UNITS CONTAINED IN TWO OR MORE COLLECTIVE AGREEMENTS. IN THE CIRCUMSTANCES OF THIS APPLICATION WE ARE OF THE VIEW THAT THE AMENDMENT TO THE BARGAINING UNIT SOUGHT BY THE APPLICANT OUGHT NOT TO BE GRANTED. IN OUR OPINION, THE AMENDMENT TO THE BARGAINING UNIT SOUGHT BY THE APPLICANT IS MORE PROPERLY RESOLVED BY THE PARTIES IN THE COURSE OF COLLECTIVE BARGAINING. WE POINT OUT THAT IN ADDITION TO THE EXPERIENCE AND FAMILIARITY WITH THE BARGAINING UNIT AND THE APPLICANT'S BUSINESS OPERATIONS WHICH ARE UNDOUBTEDLY POSSESSED BY BOTH PARTIES IT MAY BE THAT SECTION 95(2) OF THE LABOUR RELATIONS ACT MAY ALSO BE UTILIZED BY THE PARTIES IN THE RESOLUTION OF THEIR DIFFERENCES CONCERNING THE ADDITIONAL EXCLUSIONS FROM THE BARGAINING UNIT PROPOSED BY THE APPLICANT IN THE CURRENT AGREEMENT.

15. HAVING REGARD TO THE FOREGOING, AND, EVEN ASSUMING, WITHOUT DECIDING, THAT A SALE OF A BUSINESS OR PART OF A BUSINESS HAS OCCURRED BETWEEN THE TELEGRAM AND THE APPLICANT, THE BOARD IS NOT PREPARED, IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 55(6) OF THE LABOUR RELATIONS ACT, TO GRANT RELIEF WHICH THE APPLICANT IS SEEKING.

16. ACCORDINGLY, THIS APPLICATION IS DISMISSED.

2897-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. AMERI-CANA MOTEL LTD. (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND E. BOYER.

DECISION OF THE BOARD:

DECEMBER 5, 1972.

. . .

5. THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF A UNIT OF CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, IN THE REGIONAL MUNICIPALITY OF NIAGARA AND HALDIMAND COUNTY.

6. IN PARAGRAPH 13 OF ITS REPLY, THE RESPONDENT HAS STATED:

I AM BUILDING AN ADDITION TO MOTEL.
I HAVE HIRED ON A CASUAL BASIS TWO
CARPENTERS WHO WORK ONLY WHEN CALLED
FROM TIME TO TIME AND ALSO A HELPER
ON THE SAME BASIS. THEIR WORK WILL
BE COMPLETED IN A MATTER OF A FEW
DAYS.

7. IN PARAGRAPH 14(2) OF ITS REPLY, THE RESPONDENT HAS CONSENTED TO THE APPLICATION BEING DISPOSED OF BY THE BOARD WITHOUT A HEARING BY THE BOARD AND HAS MADE THE FOLLOWING REPRESENTATIONS THEREON:

THIS DOESN'T SEEM TO MAKE ANY SENSE
TO ME. I AM NOT IN THE CONSTRUCTION
BUSINESS AND DON'T INTEND TO BE. WHEN
ADDITION IS COMPLETE I WILL HAVE NO
NEED OF ANY CARPENTER.

8. THE FACT THAT AN EMPLOYER HIRES EMPLOYEES ON A CASUAL BASIS AND THAT THEIR WORK WILL SOON BE FINISHED HAS NOT BEEN HELD BY THE BOARD TO BE A GROUND FOR DENYING CERTIFICATION TO A TRADE UNION.

9. IT APPEARS FROM THE MATERIAL FILED WITH THE BOARD THAT ALTHOUGH THE GENERAL NATURE OF THE RESPONDENT'S BUSINESS IS THE OPERATION OF A SEASONAL MOTEL, IT HAS, NEVERTHELESS, ENTERED THE FIELD OF CONSTRUCTION FOR THE PURPOSE OF BUILDING AN ADDITION TO ITS MOTEL.

10. THE BOARD HAS, IN THE PAST, HAD OCCASION TO CONSIDER SITUATIONS WHERE EMPLOYERS, WHOSE MAIN BUSINESS IS NOT IN THE CONSTRUCTION INDUSTRY, HAVE, NEVERTHELESS, ENTERED THE CONSTRUCTION INDUSTRY ON WHAT MAY WELL HAVE BEEN THEIR FIRST AND LAST CONSTRUCTION INDUSTRY VENTURE. THE BOARD HAS, IN A SERIES OF DECISIONS, HELD THAT WHILE THE PRINCIPAL BUSINESS OF AN EMPLOYER MAY NOT BE IN THE CONSTRUCTION INDUSTRY, SUCH EMPLOYER MAY ALSO OPERATE A BUSINESS IN THE CONSTRUCTION INDUSTRY. THE FACT THAT AN EMPLOYER DOES NOT ANTICIPATE IT WILL REGULARLY CARRY ON A BUSINESS IN THE CONSTRUCTION INDUSTRY IN THE FUTURE OR EVEN CARRY ON ONE MORE OPERATION IN THE CONSTRUCTION INDUSTRY, IS NO REASON NOT TO HOLD THAT SUCH EMPLOYER IS CARRYING ON A BUSINESS IN THE CONSTRUCTION INDUSTRY. AN EMPLOYER MAY, OF COURSE, ALWAYS CHANGE ITS MIND IN THE FUTURE. REFERENCE IS MADE TO THE TOPS MARINA MOTOR HOTEL CASE, 64 CLLC ¶16,004, OLRB MONTHLY REPORT, JANUARY 1964, P. 583, TO THE CANADIA NIAGARA FALLS LIMITED CASE, OLRB MONTHLY REPORT, APRIL 1966, P. 44, TO THE MATTAGAMI LAKE MINES LIMITED (NO PERSONAL LIABILITY) CASE, OLRB MONTHLY REPORT, FEBRUARY 1970, P. 1356, AND TO THE KAPUSKASING BOARD OF EDUCATION CASE, OLRB M.R. JUNE 1972, P. 587. THE BOARD ACCORDINGLY FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

11. HAVING REGARD TO THE FOREGOING AND IN THE CIRCUMSTANCES OF THIS APPLICATION, THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT ON CONSTRUCTION PROJECTS IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

12. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 1, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

13. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

2558-72-R: THE INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, AFL, CIO, CLC (APPLICANT) V. THE HOLOPHANE COMPANY, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFE.
DECEMBER 7, 1972.

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3. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED NOVEMBER 16, 1972 AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT MRS. C. SCHLOTTERBECK HAS CERTAIN RESPONSIBILITIES AS A RESULT OF HER LONG EXPERIENCE WITH THE RESPONDENT IN HER POSITION AS SENIOR BOOKKEEPER. HOWEVER, THE SUPERVISORY FUNCTIONS SHE EXERCISES ARE SIMILAR TO THOSE EXERCISED BY LEAD HANDS IN A PLANT AND ARE NOT MANAGERIAL WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. SIMILARLY, ALTHOUGH MRS. SCHLOTTERBECK HAS SOME CONTACT IN LIMITED AREAS WITH MATTERS WHICH MIGHT BE CONSIDERED CONFIDENTIAL, SUCH AS MAKING CERTAIN FILINGS IN THE PERSONNEL FILES TO WHICH SHE HAS ACCESS, SHE RARELY HAS KNOWLEDGE IN THIS CAPACITY. FOR EXAMPLE, THE TYPE OF MATERIAL TO WHICH SHE HAS ACCESS INCLUDES WRITTEN REPRIMANDS AND EXECUTIVE SALARIES. WHILE SUCH MATTERS ARE CONFIDENTIAL IN THAT THEY OUGHT NOT BE THE SUBJECT OF COMMON GOSSIP, THEY ARE NOT CONFIDENTIAL IN MATTERS RELATING TO LABOUR RELATIONS SINCE, FOR EXAMPLE, THE EMPLOYEE WHO RECEIVES THE REPRIMAND AND WHO IS REPRESENTED BY THE UNION MOST CERTAINLY HAS KNOWLEDGE OF THE REPRIMAND AND IT IS LIKELY THAT THE UNION ALSO HAS SUCH

KNOWLEDGE. AGAIN, THE ABSENTEE REPORTS WHICH SHE SEES ARE NOT MATTERS WHICH ARE CONFIDENTIAL WITH RESPECT TO LABOUR RELATIONS. THE EMPLOYEE CONCERNED IS CERTAINLY AWARE OF HIS ABSENCE AND THE REPORT OF HIS ABSENCE IS NOT A MATTER WHICH IS CONFIDENTIAL. IF A RECOMMENDATION APPEARS ON THE ABSENTEE REPORT CONCERNING FUTURE ACTION TO BE TAKEN, SUCH RECOMMENDATION OUGHT TO BE BROUGHT TO THE ATTENTION OF THE PERSON CONCERNED IN THE INTEREST OF IMPROVING THE PERSON'S PERFORMANCE. HOWEVER, IF THE COMPANY DOES NOT BRING SUCH MATTERS TO THE EMPLOYEE'S ATTENTION, THE RESPONDENT'S BARGAINING POSITION CANNOT BE ADVERSELY AFFECTED IN A SIGNIFICANT MANNER.

4. IT IS NOTED THAT THE FILES TO WHICH MRS. SCHLOTTERBECK HAS ACCESS "DO NOT CONTAIN EVALUATION REPORTS ON EMPLOYEES WITH RESPECT TO THE POINT MERIT SYSTEM AND THE WITNESS (MRS. SCHLOTTERBECK) WAS UNABLE TO SAY WHERE SUCH DOCUMENTS WOULD BE KEPT." IT WOULD APPEAR THEREFORE THAT OTHER PERSONNEL FILES ARE MAINTAINED BY THE RESPONDENT TO WHICH MRS. SCHLOTTERBECK DOES NOT HAVE ACCESS.

5. ACCORDINGLY, FOR THE REASONS GIVEN IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, OLRB MONTHLY REPORT, SEPTEMBER 1966, P. 379, SINCE WE FIND THAT MRS. SCHLOTTERBECK IS NOT REGULARLY EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS BUT INDEED ONLY RARELY DEALS WITH SUCH MATTERS WHICH ARE VERY LIMITED IN NATURE, AND SINCE MRS. SCHLOTTERBECK'S EMPLOYMENT DOES NOT DEAL WITH MATTERS WHICH WOULD BE THE SUBJECT OF BARGAINING BETWEEN THE PARTIES, WE FIND THAT SHE IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

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13. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER J. D. BELL: DECEMBER 7, 1972.

I CONCUR WITH THE DECISION OF THE MAJORITY OF THE BOARD, EXCEPT WITH THEIR FINDINGS REGARDING THE STATUS OF MRS. C. SCHLOTTERBECK.

I WOULD FIND THAT SHE ACTS IN MANAGERIAL CAPACITY WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER REVEALS THAT SHE PARTICIPATES IN DECISIONS TO REPLACE EMPLOYEES. PARAGRAPH 8 STATES IN PART:

CONCERNING THE DISMISSAL OF EMPLOYEES,
THE WITNESS CONFIRMED THAT THERE HAD BEEN
OCCASIONS WHEN EMPLOYEES HAD BEEN LET GO
BECAUSE OF POOR ATTITUDES AND WORK HABITS.

SHE STATED THAT THROUGH DISCUSSION WITH MR. HARPER, AND THEIR OBSERVATION OF THE EMPLOYEES CONCERNED, A MUTUAL AGREEMENT WAS REACHED THAT THE EMPLOYEES WOULD HAVE TO BE REPLACED.

I ALSO REGARD SUCH ITEMS AS PERSONNEL FILES, EXECUTIVE SALARIES AND OPTIONAL STOCK PURCHASE PLANS TO BE CONFIDENTIAL MATTERS RELATING TO LABOUR RELATIONS.

ACCORDINGLY, I WOULD FIND THAT MRS. C. SCHLOTTERBECK IS NOT INCLUDED IN THE BARGAINING UNIT.

2490-72-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. EMPIRE PUBLIC HOUSE (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: A. S. GLEASON AND P. KOLBASKA FOR THE COMPLAINANT; A. BROWN, Q.C. AND L. SOSKIN FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL, AND BOARD MEMBER P. J. O'KEEFE: DECEMBER 7, 1972.

1. THIS IS A COMPLAINT FILED UNDER THE PROVISIONS OF SECTION 79 OF THE LABOUR RELATIONS ACT WHEREIN THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON WILLIAM COCHRANE, ON OR ABOUT AUGUST 25, 1972, WAS DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 58 OF THE SAID ACT.

2. THE EVIDENCE DISCLOSES THAT LARRY SOSKIN ACQUIRED PART OWNERSHIP IN THE RESPONDENT IN MARCH OF 1971. ALTHOUGH HE HAD NO PRIOR EXPERIENCE IN THE HOTEL BUSINESS PRIOR TO THIS TIME, HE DID RECEIVE ASSISTANCE FROM HIS FATHER SAM SOSKIN WHO HAD PREVIOUSLY PARTICIPATED IN THE MANAGEMENT OF A UNIONIZED DRINKING ESTABLISHMENT. ON AUGUST 5, 1972, LARRY SOSKIN BY MEMO (EXHIBIT #3) ADVISED ALL STAFF OF THE APPOINTMENT OF JOHN CABRAL AS MANAGER. THIS MEMO ALSO CONTAINED "CONDITIONS OF EMPLOYMENT" WHICH PROVIDED:

"(1) THE MAN BEHIND THE BAR IS IN COMPLETE CHARGE AT ALL TIMES AND HIS DECISIONS ARE FINAL.

(2) ALL EMPLOYEES WILL CO-OPERATE IN EVERY MANNER WITH THE BAR-MAN IN RESPECT TO CUSTOMER DISCIPLINE.

- (3) EMPLOYEES WILL WORK IN THE AREA OF THE ESTABLISHMENT AS REQUIRED BY THE BAR-TENDER AND AT HIS DISCRETION.
- (4) WAITERS ARE NOT TO SIT WITH CUSTOMERS, WHILE THEY ARE ON DUTY.
- (5) WITH THE EXCEPTION OF CASUAL EMPLOYEES, NEITHER FULL-TIME OR PART-TIME EMPLOYEES ARE PERMITTED TO DRINK IN THE HOTEL WHEN THEY ARE OFF DUTY; WIVES OR GIRL FRIENDS OF EMPLOYEES ARE NOT PERMITTED TO DRINK IN THE HOTEL WHILE AN EMPLOYEE IS ON DUTY.
- (6) IF, IN THE OPINION OF THE TAP-MAN, AN EMPLOYEE IS UNDER THE INFLUENCE OF ALCOHOL BEFORE STARTING HIS WORK SHIFT; THE BAR-MAN, AT HIS DISCRETION, MAY REPLACE HIM ON THAT SHIFT, THE EMPLOYEE, IN THE EVENT OF A FURTHER MISDEMEANOR OF THIS NATURE, WILL BE DISMISSED.
- (7) UNCOUTH LANGUAGE, SWEARING, COMMENTS ABOUT RACE OR CREED AMONGST EMPLOYEES OR DIRECTED AT ANOTHER EMPLOYEE WILL NOT BE PERMITTED OR TOLERATED.
- (8) CUSTOMER OR STAFF COMPLAINTS OF DISHONESTY IN RESPECT TO AN EMPLOYEE WILL BE INVESTIGATED AND MAY RESULT IN DISMISSAL.
- (9) CUSTOMERS ARE THE LIFE-BLOOD OF ANY BUSINESS, WITHOUT THEM WE CAN ALL GO HOME: PROVIDING CUSTOMERS ARE ACTING IN A PROPER MANNER THEY ARE NOT TO BE ABUSED OR RIDICULED OR INSULTED IN ANY WAY. PERSONAL REMARKS OR COMMENTS ABOUT A CUSTOMER'S HAIR STYLE, MODE OF DRESS, ETC. WILL NOT BE PERMITTED.
- (10) ANY EMPLOYEE CAUGHT DRINKING WHILE ON DUTY IS SUBJECT TO DISMISSAL AT THE DISCRETION OF THE TAP-MAN.

THE FOREGOING "CONDITIONS OF EMPLOYMENT" WILL BE READ AND ADHERED TO BY ALL EMPLOYEES. A BREACH OF THESE "CONDITIONS OF EMPLOYMENT" CAN RESULT IN DISMISSAL, IN ACCORD WITH THE REQUIREMENTS OF THE DEPARTMENT OF LABOUR."

3. IT WAS ALSO IN AUGUST OF 1972, THAT THE COMPLAINANT BEGAN ITS ORGANIZATIONAL CAMPAIGN IN RELATION TO THE EMPLOYEES OF THE RESPONDENT WHICH CULMINATED IN AN APPLICATION FOR CERTIFICATION (BOARD FILE NO. 2455-72-R) BEING FILED ON AUGUST 23, 1972. NOTICE OF THIS APPLICATION WAS POSTED UPON THE PREMISES OF THE RESPONDENT ON AUGUST 26, 1972.

4. THE EVIDENCE FURTHER DISCLOSES THAT ON AUGUST 18, 1972, WILLIAM COCHRANE ASSISTED A FELLOW WAITER, BERT MERROW, IN OBTAINING THE SIGNATURES OF CERTAIN OF THE RESPONDENT'S EMPLOYEES ON APPLICATION CARDS FOR MEMBERSHIP IN THE COMPLAINANT. WHEN MERROW REPORTED FOR HIS REGULAR SHIFT THE NEXT DAY, HE WAS DISCHARGED. IN THIS REGARD, COCHRANE TESTIFIED THAT SAM SOSKIN HAS ASKED HIM WHEN HE REPORTED FOR WORK ON AUGUST 17, 1972, "IF I HAD ANYTHING TO DO WITH A UNION OR WISHED A UNION." ACCORDING TO THE WITNESS SAM ALSO INFORMED HIM AT THIS TIME THAT "IF YOU WANT A UNION, YOU'LL BE THROUGH AT THE END OF THE SHIFT TODAY." COCHRANE TESTIFIED THAT HE INFORMED SAM THAT HE HAD NOTHING TO DO WITH A UNION, WHEREUPON SAM THEN ASKED "IF BERT MERROW HAD ANYTHING TO DO WITH THE UNION." THE WITNESS STATED THAT HE INFORMED SAM THAT "BERT WAS INTERESTED IN THE UNION AND WANTED TO SIGN THE BOYS UP." COCHRANE FURTHER TESTIFIED THAT AT ABOUT 5:00 P.M. THAT AFTERNOON, HE WAS AGAIN APPROACHED SAM WHO TOLD HIM THAT "IF YOU ARE INTERESTED IN THE UNION, I'LL MAKE IT HARD FOR YOU AND YOU WILL BE SORRY." SAM SOSKIN'S TESTIMONY IS IN DIRECT CONFLICT WITH COCHRANE IN THIS REGARD. HE DENIES HAVING ANY CONVERSATION WITH COCHRANE REGARDING UNION ACTIVITY AT THIS TIME.

5. THE LETTER TERMINATING MERROW (EXHIBIT #1) IS REPRODUCED AS FOLLOWS:

"AUG 17/72
MR. BERT MERROW
C/O EMPIRE PUBLIC HOUSE
HAMILTON RD., LONDON.

DEAR BERT:

I REGRET TO ADVISE THAT WE FEEL IT NECESSARY TO TERMINATE YOUR EMPLOYMENT EFFECTIVE YESTERDAY.

I HAVE PREPARED YOUR PAY UNTIL YESTERDAY, ONE WEEKS PAY IN LIEU OF NOTICE & 2% OF EARNINGS FROM WHEN YOU RECEIVED YOUR HOLIDAY PAY.

I WOULD ALSO ADVISE THAT I DO NOT WANT YOU TO FREQUENT THESE PREMISES OTHERWISE I WILL CONSIDER IT TRESPASSING.

YOURS VERY TRULY,

LARRY SOSKIN (SIGNED)

EMPIRE PUBLIC HOUSE."

6. ON AUGUST 21, 1972, THE COMPLAINANT ACCORDINGLY INSTITUTED COMPLAINT PROCEEDINGS ON MERROW'S BEHALF (BOARD FILE NO. 2456-72-11). THE MATTER HOWEVER WAS SETTLED AT THE FIELD OFFICER STAGE OF THE PROCEEDINGS AND THE COMPLAINT WAS SUBSEQUENTLY WITHDRAWN BY LEAVE OF THE BOARD. ALTHOUGH MERROW WAS OFFERED REINSTATEMENT HE DECLINED, AS HE WAS SUCCESSFUL IN OBTAINING OTHER EMPLOYMENT. ALTHOUGH THE BOARD IS NOT NORMALLY INTERESTED IN THE MOTIVES OF THE RESPONDENT IN THIS REGARD, LARRY SOSKIN TESTIFIED THAT THE TERMINATION WAS BROUGHT ABOUT BECAUSE OF MERROW'S PERSISTENT PRACTICE OF SITTING WITH CUSTOMERS WHILE ON DUTY. HE FURTHER STATED THAT HE HAD SUBSEQUENTLY AGREED TO REINSTATE MERROW ON THE ADVICE OF COUNSEL, BECAUSE, IN HIS WORDS, "I DIDN'T DOCUMENT MY DISCUSSIONS WITH HIM ABOUT GIVING HIM DIRECT NOTICE."

7. THE EVIDENCE OF COCHRANE CONCERNING THE EVENTS WHICH TRANSPIRED ON AUGUST 25, 1972, IS AS FOLLOWS. HE HAD MADE ARRANGEMENTS TO QUIT WORK EARLY THAT DAY AND AS HE WAS ABOUT TO LEAVE THE PREMISES AT 7:00 P.M., GEORGE SIANNAS, THE REGULAR BARTENDER, INFORMED HIM THAT LARRY SOSKIN WISHED TO SEE HIM IN HIS OFFICE. THE WITNESS STATED THAT AS HE ENTERED THE OFFICE, LARRY HANDED HIM AN ENVELOPE AND INFORMED HIM THAT "I HEAR YOU'VE BEEN TALKING ABOUT ME - I'M SORRY I GOT TO LET YOU GO." THE LETTER IN THE ENVELOPE (EXHIBIT #2) IS REPRODUCED HEREIN AS FOLLOWS:

"Aug 25/72
MR. WM. COCHRANE
EMPIRE PUBLIC HOUSE
LONDON.

DEAR BILL;

I REGRET THAT I FEEL IT NECESSARY TO
TERMINATE EMPLOYMENT ARRANGEMENTS EFFECTIVE
AT ONCE.

ENCLOSED HERewith OUR CHEQUE #0869
REPRESENTING ONE WEEKS PAY IN LIEU OF NOTICE
PLUS 2% OF YOUR EARNINGS FROM THE TIME OF YOUR
HOLIDAYS (TOTAL \$1453.50 @ 2% = \$29.07)

I WOULD ALSO ASK THAT YOU DO NOT FREQUENT
OUR PREMISES OTHERWISE I WILL CONSIDER IT
TRESPASSING.

EMPIRE PUBLIC HOUSE

ENCLOSED:

LARRY SOSKIN (SIGNED

U.I.C. SEPARATION
ONT. HOSP. FORM 104

L.R. SOSKIN

8. IN THIS REGARD, LARRY SOSKIN TESTIFIED THAT COCHRANE'S PERFORMANCE AS A WAITER WAS EXCELLENT UNTIL THE SPRING OF 1972 WHEN HE BEGAN TO RECEIVE REPORTS THAT COCHRANE HAD BEEN UNDER THE INFLUENCE OF ALCOHOL WHILE ON DUTY. TO THIS CHARGE, THE WITNESS STATED THAT COCHRANE HAD REPLIED THAT HE HAD RECENTLY BEEN TO A DOCTOR AND THAT ANOTHER DRINK WOULD KILL HIM. THE WITNESS FURTHER STATED THAT HE GAVE A WARNING LETTER (EXHIBIT #4) TO COCHRANE ON AUGUST 14, 1972, UPON THE COMPLAINT OF JOHN CABRAL, THAT COCHRANE WAS INTOXICATED WHILE ON DUTY THE PREVIOUS SATURDAY. THIS LETTER TAKES THE FOLLOWING FORM:

"AUG 14/72.

MR. WM. COCHRANE
C/O EMPIRE PUBLIC HOUSE
LONDON, ONT.

DEAR BILL;

YOU WERE ADVISED IN MY MEMO OF AUG 5/72
THERE WAS TO BE NO DRINKING WHEN YOU ARE ON
DUTY.

IF THIS SITUATION SHOULD OCCUR AGAIN,
I REGRET WE WILL BE FORCED TO TERMINATE
YOUR EMPLOYMENT.

THIS WILL BE YOUR FINAL NOTICE IN THIS
REGARD.

YOURS VERY TRULY,

LARRY SOSKIN (SIGNED)

EMPIRE PUBLIC HOUSE."

9. LARRY SOSKIN FURTHER TESTIFIED THAT ON AUGUST 25, 1972, HIS FATHER CAME INTO HIS OFFICE AND REPORTED THAT COCHRANE HAD BEEN DRINKING AGAIN. HE STATED THAT HE THEN LEFT THE OFFICE AND WATCHED COCHRANE AND NOTED THAT HE WAS TALKING IN A LOUD AND BOISTEROUS MANNER. HE THEN CALLED CABRAL INTO THE OFFICE, WHO ALSO WAS OF THE OPINION THAT HE HAD BEEN DRINKING. ON THIS POINT, HOWEVER, ANOTHER WITNESS, GEORGE SIANNIS, THE TAP MAN, TESTIFIED THAT COCHRANE AT THE TIME APPEARED SOBER. LARRY SOSKIN FURTHER TESTIFIED THAT HE WAITED UNTIL COCHRANE FINISHED HIS SHIFT AND PREPARED THE LETTER TOGETHER WITH THE CHECK. UPON TURNING THESE OVER TO COCHRANE, HE TOLD HIM THAT "YOU HAVE PUT ME IN AN AWKWARD POSITION." WHEN ASKED TO EXPLAIN THESE WORDS, HE STATED THAT IN VIEW OF THE FILING OF THE COMPLAINT ON BEHALF OF MERROW, HE KNEW THAT HE WOULD AGAIN BE CHARGED FOR DISMISSING AN EMPLOYEE FOR UNION ACTIVITY. UPON CROSS-EXAMINATION, WHEN ASKED AS TO WHY HE SPECIFICALLY BARRED BOTH MERROW & COCHRANE, (SEE THE LAST PARAGRAPH OF TERMINATION LETTERS

EXHIBIT #1 AND EXHIBIT #2, RESPECTIVELY) FROM THE RESPONDENT'S PREMISES FOLLOWING THEIR DISMISSALS, LARRY SOSKIN REPLIED THAT THEY COULD CAUSE TROUBLE. IN REPLY TO THE QUESTION AS TO WHETHER IT WAS HIS FIRM POLICY TO BAR FORMER EMPLOYEES, HE REPLIED THAT SOME STILL FREQUENT THE PREMISES.

10. COCHRANE'S POSITION IS THAT SINCE THE TIME OF RECEIVING THE MEMO INCORPORATING THE CONDITIONS OF EMPLOYMENT (EXHIBIT No. 3) ON AUGUST 5, 1972, HE DID NOT HAVE A DRINK. HE FURTHER STATED THAT AT ABOUT THIS TIME HE WAS UNDER A DOCTOR'S CARE AND WAS TAKING MEDICATION BECAUSE OF HIGH BLOOD PRESSURE. HE ATTRIBUTED ORIGIN OF THE WARNING LETTER OF AUGUST 14, 1972, (EXHIBIT #4) TO A COMPLAINT STEMMING FROM A DISSATISFIED CUSTOMER TO WHOM HE HAD SERVED THE PREVIOUS SATURDAY. THESE FACTS, HE STATED WERE RELATED TO HIM BY CABRAL. WHEN QUESTIONED AS TO WHY HE DID NOT PURSUE THE MATTERS RAISED IN THE LETTER FURTHER WITH LARRY SOSKIN, HE REPLIED THAT HE HAD APPROACHED JOHN CABRAL, THE MANAGER WHO INFORMED HIM TO "PUT IT AWAY AND FORGET ABOUT IT."

11. ALTHOUGH SAM SOSKIN TESTIFIED THAT HIS POSITION WITH THE RESPONDENT WAS IN THE CAPACITY OF MERELY HELPING OUT HIS SON, "WITH NOTHING MUCH TO DO" WE ARE SATISFIED HAVING REGARD TO THE TOTALITY OF THE EVIDENCE THAT THE EMPLOYEES CONSIDERED HIM AS POSSESSING MANAGERIAL FUNCTIONS. INDEED, WE ARE SATISFIED THAT IT WAS MAINLY ON THE BASIS OF HIS RECOMMENDATION WHICH LED LARRY SOSKIN, TO DISCHARGE THE LATTER, SAM SOSKIN FURTHER TESTIFIED THAT HE HAD WARNED COCHRANE ON TWO PREVIOUS OCCASIONS "NOT TO LET ME CATCH YOU DRINKING AROUND HERE." ALTHOUGH HE TESTIFIED THAT COCHRANE WAS DRINKING WHILE ON DUTY ON AUGUST 25, 1972, HE STATED THAT HE HAD NOT OBSERVED HIM DRINKING AT THIS TIME AND CONCEDED THAT COCHRANE'S BREATH AT THIS TIME COULD HAVE RESULTED FROM A MIXTURE OF TOBACCO AND MEDICATION.

12. HAVING REGARD TO ALL OF THE TESTIMONY AS ELICITED THROUGH COCHRANE AND SIANNIS ON THE ONE HAND AS COMPARED WITH THE TESTIMONY OF SAM SOSKIN AND CABRAL, ON THE OTHER HAND, WE FIND THAT COCHRANE WAS NOT UNDER THE INFLUENCE OF ALCOHOL NOR HAD HE BEEN DRINKING WHILE ON DUTY ON AUGUST 25, 1972. HOWEVER, THE QUESTION AS TO WHETHER COCHRANE HAD BEEN DISCHARGED FOR JUST CAUSE IN THESE CIRCUMSTANCES IS NOT AN ISSUE TO BE DECIDED BY THIS BOARD. WHAT IS IN ISSUE HERE IS WHETHER COCHRANE HAS BEEN DEALT WITH CONTRARY TO THE LABOUR RELATIONS ACT.

13. HAVING REGARD TO THE TOTALITY OF THE EVIDENCE IN THIS REGARD AS ADDUCED THROUGH WITNESSES CALLED ON BEHALF OF THE COMPLAINANT AND RESPONDENT, WHICH IN MANY RESPECTS IS IN DIRECT CONFLICT, WE ARE OF THE OPINION THAT THE ISSUE MUST ULTIMATELY BE RESOLVED ON THE BASIS OF THE CREDIBILITY OF THE RESPECTIVE WITNESSES. HAVING CAREFULLY OBSERVED THE MANNER IN WHICH THESE PERSONS TESTIFIED AND THEIR DEMEANOUR IN THE WITNESS BOX AND TAKING INTO ACCOUNT THE REASONABLENESS OF THEIR RESPECTIVE TESTIMONIES, WE PREFER THE EVIDENCE OF THE COMPLAINANT'S WITNESSES TO THOSE OF THE RESPONDENT WHEREVER THEY CONFLICT.

14. ACCORDINGLY, WE FIND THAT MERROW'S DISCHARGE WAS PRIMARILY

MOTIVATED BY THE KNOWLEDGE ON THE PART OF THE RESPONDENT OF HIS UNION ACTIVITIES AS DISCLOSED BY COCHRANE TO SAM SOSKIN ON AUGUST 17, 1972. IN THESE CIRCUMSTANCES, THE SPECIFIC BAR UPON FREQUENTING THE RESPONDENT'S PREMISES, IMPOSED UPON MERROW AT THE TIME OF HIS DISCHARGE, LENDS FURTHER CREDENCE IN SUPPORT OF THIS FINDING. IT SHOULD BE NOTED THAT THE WORDING OF THIS BAR IS IN EXACTLY THE SAME TERMS AS THE SUBSEQUENT LETTER OF TERMINATION (EXHIBIT #2) HANDED TO COCHRANE ON AUGUST 25, 1972. IT WOULD FURTHER APPEAR THAT ONLY THESE TWO INDIVIDUALS WERE SINGLED OUT FOR SUCH TREATMENT AT THE TIME OF THEIR TERMINATIONS. THE PREPONDERANCE OF PROBABILITY IN THIS CASE THEREFORE DICTATES THE CONCLUSION THAT IN DISCHARGING COCHRANE, THE RESPONDENT WAS ACTUATED BY A DISCRIMINATORY MOTIVE TO GET RID OF HIM ONCE THE AGGRIEVED PERSON HAD BECOME IDENTIFIED TOGETHER WITH MERROW IN THE CONDUCT OF THE ORGANIZATIONAL CAMPAIGN. ACCORDINGLY, HAVING REGARD TO ALL OF THE CIRCUMSTANCES, WE ARE NOT SATISFIED THAT COCHRANE WAS DISCHARGED BECAUSE OF HIS ALLEGED DRINKING ACTIVITIES AS SUGGESTED BY THE RESPONDENT.

15. WE ACCORDINGLY FIND THAT THE COMPLAINANT HAS MET THE ONUS UPON IT AND HAS PROVED THAT WILLIAM COCHRANE WAS DISCHARGED BY THE RESPONDENT ON AUGUST 25, 1972, CONTRARY TO THE PROVISIONS OF SECTION 58 OF THE LABOUR RELATIONS ACT.

16. THE BOARD THEREFORE DIRECTS THAT THE RESPONDENT FORTHWITH REINSTATE WILLIAM COCHRANE IN THE SAME POSITION OR A LIKE POSITION AS HE HELD ON THE DATE OF HIS DISCHARGE.

17. THE BOARD FURTHER DIRECTS THAT THE RESPONDENT PAY TO WILLIAM COCHRANE AS COMPENSATION FOR LOSS OF EARNINGS SUSTAINED BY HIM THE SUM OF \$324.00.

18. THE BOARD DIRECTS THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS, IF ANY, THAT WILLIAM COCHRANE SUSTAINED BETWEEN NOVEMBER 13, 1972 (THE DATE OF THIS HEARING) AND THE DATE OF HIS REINSTATEMENT BY THE RESPONDENT WHICH SHALL THEN BE PAID HIM. IN DEFAULT OF AN AGREEMENT OF THE PARTIES ON THE AMOUNT ABOVE REFERRED TO WITHIN 14 DAYS AFTER THE RELEASE OF THIS DECISION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO THE ADDITIONAL AMOUNT TO BE PAID TO WILLIAM COCHRANE.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: DECEMBER 7, 1972.

I DISSENT.

I AM IN AGREEMENT WITH MY COLLEAGUES THAT THE ISSUES CONTAINED IN THIS CASE MUST BE RESOLVED HAVING REGARD TO THE CREDIBILITY OF THE WITNESSES CALLED BY THE RESPECTIVE PARTIES.

HAVING REGARD TO THE WITNESSES CALLED BY THE RESPONDENT, THEIR

DEMEANOUR IN THE WITNESS BOX, AND THE EVIDENCE GIVEN BY THEM, I WOULD FIND THAT THE COMPLAINANT WILLIAM COCHRANE WAS NOT DISCHARGED THROUGH A VIOLATION OF SECTION 58 OF THE LABOUR RELATIONS ACT.

I AM SUPPORTED IN MY FINDINGS BY THE EVIDENCE GIVEN BY COCHRANE, WHICH, IN MY OPINION, CORROBORATES THE EVIDENCE PRESENTED BY THE RESPONDENT.

INITIALLY, WHILE GIVING EVIDENCE, COCHRANE TESTIFIED THAT HE HAD BEEN DRINKING ON THE JOB DURING THE MONTH OF AUGUST UP UNTIL THE TIME OF HIS DISCHARGE. SUBSEQUENTLY IN HIS TESTIMONY HE RETRACTED THAT STATEMENT (UPON ADMONISHMENTS FROM THE BOARD THAT HE WAS UNDER OATH) AND TESTIFIED THAT HE HAD NOT TAKEN A DRINK OF ALCOHOLIC BEVERAGE ANY PLACE SINCE SOMETIME PRIOR TO AUGUST 5TH, 1972.

I FIND THIS LATTER STATEMENT COMPLETELY INCONGRUOUS WITH THE LETTER GIVEN TO HIM BY THE RESPONDENT DATED AUGUST 14TH, 1972 WHICH READ AS FOLLOWS:

"AUG 14/72.

MR. WM. COCHRANE
c/o EMPIRE PUBLIC HOUSE
LONDON, ONT.

DEAR BILL;

YOU WERE ADVISED IN MY MEMO OF AUG 5/72
THERE WAS TO BE NO DRINKING WHEN YOU ARE ON
DUTY.

IF THIS SITUATION SHOULD OCCUR AGAIN,
I REGRET WE WILL BE FORCED TO TERMINATE
YOUR EMPLOYMENT.

THIS WILL BE YOUR FINAL NOTICE IN THIS
REGARD.

YOURS VERY TRULY,

LARRY SOSKIN (SIGNED)

EMPIRE PUBLIC HOUSE."

THE TESTIMONY OF COCHRANE WAS THAT HE MADE NO COMPLAINT NOR DENIAL OF THE FACTS, UPON RECEIPT OF SUCH LETTER.

IT IS ALSO OF GREAT SIGNIFICANCE TO NOTE THAT SUCH LETTER WAS GIVEN TO HIM SOME DAYS PRIOR TO THE UNION'S ORGANIZATIONAL CAMPAIGN.

IS THERE THEN, ANY RATIONAL EXPLANATION AS TO WHY THE EMPLOYER WOULD DELIVER SUCH A LETTER UNLESS IT BELIEVED THE CONTENTS TO BE TRUE, ESPECIALLY SINCE THE EMPLOYER ADMITTED THAT WITH THE EXCEPTION OF HIS DRINKING, COCHRANE WAS AN EXCELLENT EMPLOYEE?

WHAT POSSIBLE MOTIVE CAN BE ATTRIBUTED TO THE EMPLOYER WHEN SUCH LETTER WAS DELIVERED BEFORE THERE WAS ANY SUGGESTION OF UNION ORGANIZATION? WHY WOULD NOT COCHRANE COMPLAIN ABOUT SUCH LETTER IF THE CONTENTS WERE UNTRUE?

I MUST CONCLUDE, THEREFORE, THAT THE CONTENTS OF THE LETTER WERE TRUE AND THAT WHEN COCHRANE WAS THOUGHT BY THE MANAGEMENT TO BE DRINKING ON OR ABOUT AUGUST 25TH, 1972, IT FOLLOWED THROUGH WITH ITS WARNING CONTAINED IN SUCH LETTER AND TERMINATED COCHRANE'S EMPLOYMENT.

IF MY CONCLUSIONS ARE CORRECT, THEREFORE, THERE HAS BEEN NO BREACH OF SECTION 58 OF THE LABOUR RELATIONS ACT.

I WOULD SO FIND, AND DISMISS THE APPLICATION.

2786-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. MARSLAND ENGINEERING LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

DECISION OF THE BOARD:

DECEMBER 7, 1972.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. THE BOARD BY ITS DECISION DATED NOVEMBER 15, 1972 DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN IN WHICH THE VOTERS WERE ASKED TO INDICATE WHETHER OR NOT THEY WISHED TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

2. THE RESPONDENT BY LETTERS DATED NOVEMBER 22 AND DECEMBER 1, 1972 ADVISED THE BOARD THAT THE SPECIMEN BALLOTS APPEARING ON THE NOTICES OF THE TAKING OF THE VOTE WHICH WERE POSTED ON THE RESPONDENT'S PREMISES WERE MARKED BY PERSONS UNKNOWN TO THE RESPONDENT IN SUCH A MANNER WHICH WOULD TEND TO INDICATE THAT THE RESPONDENT'S EMPLOYEES SHOULD VOTE IN FAVOUR OF THE APPLICANT. THE BOARD'S NOTICES OF THE TAKING OF THE VOTE WERE DEFACED BY UNKNOWN PERSONS IN THE MANNER REFERRED TO ABOVE IN SEVERAL INSTANCES. THE RESPONDENT ACCORDINGLY REQUESTED THE BOARD TO DISMISS THE APPLICATION ON THE GROUNDS THAT THE BOARD'S NOTICES WERE DEFACED DURING THE QUIET PERIOD PRECEDING THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER.

3. THE DEFACING OF THE BOARD'S NOTICES IN THE MANNER REFERRED

TO ABOVE WOULD CONSTITUTE A BREACH OF THE LABOUR RELATIONS ACT, AND IF THE IDENTITY OF THE PERSON WHO DEFACED THE BOARD'S NOTICES WAS KNOWN, AN APPLICATION COULD BE MADE TO PROSECUTE SUCH PERSON.

4. HOWEVER, SINCE THE RESPONDENT WAS UNABLE TO IDENTIFY THE PERSON WHO DEFACED THE BOARD'S NOTICES AND IN THE ABSENCE OF ANY OTHER INCIDENT WHICH WOULD CAUSE THE DEFACING OF THE BOARD'S NOTICES TO MATERIALLY AFFECT THE ABILITY OF THE RESPONDENT'S EMPLOYEES TO INDICATE THEIR TRUE WISHES IN THE REPRESENTATION VOTE IN THIS MATTER, THE BOARD IS UNABLE TO FIND THAT THE MATTERS OF WHICH THE RESPONDENT COMPLAINS WOULD PREVENT THE TRUE WISHES OF THE RESPONDENT'S EMPLOYEES FROM BEING FREELY INDICATED IN THE REPRESENTATION VOTE. WE ACCORDINGLY FIND, WITHOUT CONDONING THE BREACHES OF THE ACT COMPLAINED OF, THAT THE DEFACING OF THE BOARD'S NOTICES IN THIS MATTER IS NOT SUFFICIENT CAUSE FOR THE BOARD TO SET ASIDE THE RESULTS OF THE REPRESENTATION VOTE.

. . .

2338-72-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. PATCHO-
GUE PLYMOUTH HAWKESBURY MILLS, A DIVISION OF AMOCO CANADA PETROLEUM
COMPANY LTD. (RESPONDENT) V. PATCHOGUE PLYMOUTH EMPLOYEES ASSOCIATION
(INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F ADE AND O. HODGES.

APPEARANCES AT THE HEARING: J. SACK AND P. J. DUPONT FOR THE APPLICANT; F. R. VON VEH, B. D. PEARSON, T. W. WILLIAMS M. MENARD AND J. DAVIS FOR THE RESPONDENT; ROBIN B. CUMINE AND RONALD CORKUM FOR THE INTERVENER.

DECISION OF THE BOARD:

DECEMBER 11, 1972.

1. IN ITS DECISION DATED AUGUST 23, 1972, THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF CERTAIN PERSONS NAMED THEREIN. IT FURTHER DIRECTED THE HOLDING OF A REPRESENTATION VOTE WITH THE BALLOT BOX TO BE SEALED AND CERTAIN BALLOTS SEGREGATED. THE BOARD FURTHER DIRECTED THAT THE MATTER BE LISTED FOR HEARING IN ORDER TO HEAR EVIDENCE AND ARGUMENT ON THE QUESTION AS TO THE STATUS OF THE INTERVENER AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT AND ALL OUTSTANDING ISSUES.

2. PURSUANT TO ITS DECISION HEREIN DATED AUGUST 23, 1972, THE BOARD HEARD THE EVIDENCE AND ARGUMENT OF THE PARTIES WITH RESPECT TO THE STATUS OF THE INTERVENER AS A TRADE UNION WITHIN THE MEANING OF THE ACT AND WITH RESPECT TO THE REPORT OF THE EXAMINER AND TO CHARGES FILED BY THE APPLICANT BY LETTER DATED AUGUST 16, 1972 CONCERNING CERTAIN CONDUCT OF THE RESPONDENT PRECEDING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE ORDERED BY THE BOARD IN THE SAID DECISION.

3. THE BOARD PROPOSES TO DEAL FIRST WITH THE QUESTION OF STATUS. THE EVIDENCE ESTABLISHES THAT ON JULY 10, 1972, EMPLOYEES OF THE RESPONDENT ARRANGED A MEETING FOR THE PURPOSE OF ORGANIZING A LABOUR (SIC) UNION TO BE KNOWN AS PATCHOGUE PLYMOUTH EMPLOYEES ASSOCIATION. A DRAFT CONSTITUTION WAS READ, AMENDED AND UNANIMOUSLY ADOPTED AS THE CONSTITUTION OF A LABOUR UNION UNDER THE NAME OF PATCHOGUE PLYMOUTH EMPLOYEES ASSOCIATION. IMMEDIATELY FOLLOWING THE ADOPTION OF THE CONSTITUTION MEMBERSHIP, APPLICATIONS WERE RECEIVED AND ACCEPTED FROM THE SEVENTEEN EMPLOYEES PRESENT. NOMINATION AND ELECTION OF OFFICERS THEN FOLLOWED.

4. IT WAS SUBMITTED BY THE APPLICANT THAT THE INTERVENER HAD NOT ESTABLISHED ITS STATUS AS A TRADE UNION SINCE THE MEMBERSHIP HAD FAILED TO RATIFY THE CONSTITUTION AFTER THEY BECAME MEMBERS. A SIMILAR SITUATION AROSE IN THE CASE OF NURSES' ASSOCIATION HOTEL DIEU HOSPITAL, ST. CATHARINES V. HOTEL DIEU HOSPITAL, ST. CATHARINES, OLRB MONTHLY REPORT JUNE 1969, P. 367. THE BOARD IN THE AFOREMENTIONED CASE SAID:

"..... WE ARE OF OPINION WHERE A CONSTITUTION IS ADOPTED AT A MEETING AND THE PERSONS WHO ADOPTED THE CONSTITUTION BECAME THE MEMBERS OF THE ORGANIZATION AT THE SAME MEETING AT WHICH THE CONSTITUTION IS ADOPTED, THE BOARD WOULD BE TAKING A VERY TECHNICAL POSITION IF IT DISTINGUISHED IN POINT OF TIME BETWEEN THE SIGNING OF MEMBERS AND THE ADOPTION OF THE CONSTITUTION. IF THE SIGNING OF MEMBERS AND THE ADOPTION OF THE CONSTITUTION TAKE PLACE AT THE SAME MEETING THEY SHOULD BE DEEMED TO HAVE TAKEN PLACE SIMULTANEOUSLY. IT THEREFORE IS OF LITTLE CONSEQUENCE WHETHER THE PERSONS IN ATTENDANCE AT THE MEETING ARE ENROLLED AS MEMBERS PRIOR TO THE ADOPTION OF THE CONSTITUTION OR WHETHER THE CONSTITUTION IS ADOPTED PRIOR TO THE ENROLMENT OF THE MEMBERS SO LONG AS THESE EVENTS TAKE PLACE AT THE SAME MEETING. IF EVERYTHING IS DONE AT THE ONE MEETING NO SUBSEQUENT CONFIRMATION OR RATIFICATION IS NECESSARY."

SEE ALSO THE CANADIAN UNION OF MANUFACTURING EMPLOYEES V. HORN ELEVATOR LIMITED CASE, OLRB MONTHLY REPORT JUNE 1970, P. 318.

5. HAVING REGARD TO ALL OF THE EVIDENCE ADDUCED ON THE QUESTION OF THE STATUS OF THE INTERVENER AND TO THE REASONS SET OUT IN THE ABOVE NOTED CASES, THE BOARD FINDS THAT THE INTERVENER IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

6. THE PARTIES AGREED AT A MEETING CONVENED BY THE EXAMINER THAT ALL PERSONS CLASSIFIED AS "QUALITY CONTROL" REFERRED TO IN PARA-

GRAPH 8 OF THE BOARD'S DECISION OF AUGUST 23, 1972 PROPERLY SHOULD BE INCLUDED IN THE BARGAINING UNIT AND THE BOARD SO FINDS. THE PARTIES FURTHER AGREED THAT JEAN CLAUDE MELOCHE, CLASSIFIED AS A GUARD, PROPERLY SHOULD BE INCLUDED IN THE BARGAINING UNIT AND THE BOARD SO FINDS.

7. EVIDENCE WAS ADDUCED AND ARGUMENT MADE BY COUNSEL WITH RESPECT TO THE CHARGES OF MISCONDUCT OF THE RESPONDENT MADE BY THE APPLICANT IN ITS LETTER OF AUGUST 16, 1972. THE APPLICANT SUBMITTED THAT ON THE BASIS OF THE EVIDENCE THE BOARD OUGHT TO CERTIFY THE APPLICANT PURSUANT TO THE PROVISIONS OF SECTION 7(4) OF THE ACT. SECTION 7(4) PROVIDES:

IF THE BOARD IS SATISFIED THAT MORE THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION AND THAT THE TRUE WISHES OF THE EMPLOYEES ARE NOT LIKELY TO BE DISCLOSED BY A REPRESENTATION VOTE, THE BOARD MAY CERTIFY THE TRADE UNION AS BARGAINING AGENT WITHOUT TAKING A REPRESENTATION VOTE.

8. BEFORE THE BOARD MAY EXERCISE ITS DISCRETION TO CERTIFY WITHOUT A VOTE UNDER SECTION 7(4) IT MUST, AS THE SUBSECTION PROVIDES, SATISFY ITSELF THAT MORE THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE UNION SEEKING THE BENEFIT OF THE SUBSECTION. AN EXAMINATION OF THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT MAKES IT CLEAR THAT IT CANNOT HAVE THE REQUISITE NUMBER OF MEMBERS IN ANY UNIT THAT THE BOARD MIGHT DEEM APPROPRIATE SO AS TO ENTITLE IT TO RELIEF UNDER SECTION 7(4). FOR THIS REASON AND QUITE APART FROM ANY OTHER CONSIDERATIONS WHICH MIGHT APPEAR TO BE RELEVANT TO THE APPLICATION OF 7(4) IN CIRCUMSTANCES SUCH AS EXIST IN THE PRESENT CASE, THE BOARD DENIES THE APPLICANT'S REQUEST IN THIS REGARD.

9. THE APPLICANT STATED THAT IN ITS OPINION NO USEFUL PURPOSE WOULD BE SERVED IN HOLDING A NEW REPRESENTATION VOTE IN THE EVENT THAT THE BOARD FOUND IT WAS NOT ENTITLED TO RELIEF UNDER SECTION 7(4) OF THE ACT. BOTH THE INTERVENER, WITH CERTAIN RESERVATIONS, AND THE RESPONDENT, URGED THAT THE BOARD SHOULD NOT HOLD A FURTHER VOTE BUT SHOULD DIRECT THAT THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE COUNTED.

10. THE BOARD IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE AND HAVING REGARD TO THE REQUESTS OF THE PARTIES, HEREBY DIRECTS THE REGISTRAR TO CAUSE ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE TO BE COUNTED (INCLUDING ALL THE SEGREGATED BALLOTS), AND TO REPORT TO THE BOARD.

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: BARRY W. EARLE AND D. TINTINALLI FOR THE EMPLOYER; WALTER R. STEVENSON AND CHARLES W. IRVINE FOR THE TRADE UNION.

DECISION OF THE BOARD: DECEMBER 11, 1972.

1. THIS IS A REFERENCE FROM THE MINISTER PURSUANT TO THE PROVISIONS OF SECTION 96 OF THE LABOUR RELATIONS ACT WHEREIN THE BOARD HAS BEEN REQUESTED TO DETERMINE WHETHER THE MINISTER HAS THE AUTHORITY UNDER SECTION 37(4) OF THE ACT TO MAKE AN APPOINTMENT OF AN EMPLOYER NOMINEE IN ORDER TO CONSTITUTE A BOARD OF ARBITRATION IN THIS MATTER.

2. THE ISSUE BETWEEN THE PARTIES MAY BE BRIEFLY SUMMARIZED AS FOLLOWS. THE BOARD MUST DETERMINE WHETHER OR NOT THERE IS A COLLECTIVE AGREEMENT ON FOOT BETWEEN THE PARTIES AS OF AUGUST 22, 1972 WHEN THE UNION'S NOMINEE TO A BOARD OF ARBITRATION REQUESTED THE MINISTER TO APPOINT THE EMPLOYER'S NOMINEE TO THE BOARD OF ARBITRATION. THE FACTS RELIED UPON BY THE UNION ARE AS FOLLOWS. IT IS THE UNION'S POSITION THAT FOLLOWING THE EXPIRY OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES ON APRIL 30, 1971 NEGOTIATIONS WERE ENTERED INTO WHICH RESULTED IN A MEMORANDUM OF UNDERSTANDING BEING SIGNED BY THE PARTIES WHICH WAS SUBSEQUENTLY AGREED TO BY LETTERS FROM THE EMPLOYER AND THE TRADE UNION. THE UNION ACCORDINGLY ARGUED THAT THE MEMORANDUM OF UNDERSTANDING WHICH WAS SUBSEQUENTLY RATIFIED BY THE LETTER FROM THE EMPLOYER AND FROM THE TRADE UNION INCORPORATED THE TERMS OF THE EXPIRED COLLECTIVE AGREEMENT EXCEPT AS MODIFIED BY THE MEMORANDUM OF UNDERSTANDING AND THAT THESE DOCUMENTS WHEN READ TOGETHER CONSTITUTED A COLLECTIVE AGREEMENT BETWEEN THE PARTIES. THE MEMORANDUM READS AS FOLLOWS:

MARCH 30 1972

MEMORANDUM TO READ THAT THE CONTRACTORS WILL NEGOTIATE AN AGREEMENT WITH LOCAL 117.

THERE WILL BE AN INCREASE IN THE HOURLY RATE AS OF MAY 1ST OF 30¢.

CONTRACTORS TO PAY 240 HOURS IMMEDIATELY TO WELFARE FUND FOR ALL MEMBERS IN THEIR EMPLOY FOR MONTHS OF

IF POSSIBLE A COMMITTEE BE FORMED TO NEGOTIATE FURTHER TERMS OF AGREEMENT.

MEETING TO BE CALLED BY 117 AND AFTER ACCEPTANCE BY SECRET BALLOT, BOTH PARTIES AGREE TO MEET WITHIN SEVEN DAYS, TO FINALIZE A FULL AGREEMENT.

METHOD OF PAYMENT OF WELFARE FOR MEN TO BE
SETTLED BY TRUSTEES
AND ASSOC. TO DISCUSS THIS FURTHER.

3. FOLLOWING THE EXECUTION OF THE MEMORANDUM THE PRESIDENT OF
THE CONTRACTORS' ASSOCIATION WROTE THE FOLLOWING LETTER TO THE UNION:

MAY 18, 1972

AT A GENERAL MEETING OF MAY 16TH, 1972 THE
MEMBERSHIP OF THIS ASSOCIATION APPROVED THE
MEMORANDUM GIVEN TO YOU IN APRIL OF THIS YEAR.

THE MEMBERS, AS OF THIS DATE HAVE AGREED TO
THE FOLLOWING CONDITIONS OF THIS MEMORANDUM:

- 1) TO INCREASE WAGES OF ALL PLASTERERS AND
TRAINEES IN OUR EMPLOY BY 30¢ (THIRTY CENTS)
AN HOUR EFFECTIVE THE NEXT PAY PERIOD.
- 2) TO PAY 240 HOURS TO WELFARE TRUST PLAN ON
BEHALF OF EACH EMPLOYEE WHO HAS BEEN EMPLOYED BY
EACH CONTRACTOR SINCE OCTOBER 1ST, 1971 TO
APRIL 30, 1972 AND HAS AMASSED A TOTAL OF 240
HOURS OR GREATER.
- 3) TO PAY ONLY THE HOURS EARNED FOR EACH
EMPLOYEE IF HIS HOURS EARNED WERE LESS THAN
240 HOURS TO THE WELFARE TRUST PLAN.
- 4) TO COMMENCE NEGOTIATIONS WITH A QUALIFIED
COMMITTEE WITH LOCAL 117 IN ORDER TO REACH A
FAIR SETTLEMENT FOR THE FUTURE OF THIS INDUSTRY.
- 5) WHILE NEGOTIATIONS CONTINUE, WE AGREE TO
ABIDE BY THE TERMS OF THE OLD AGREEMENT WHICH
EXPIRED APRIL 30, 1971.

4. UPON RECEIPT OF THE AFORESAID LETTER, CHARLES W. IRVINE,
THE INTERNATIONAL VICE-PRESIDENT AND TRUSTEE OF THE UNION, WROTE THE
FOLLOWING LETTER TO THE CONTRACTORS' ASSOCIATION:

MAY 18, 1972.

THIS WILL ACKNOWLEDGE RECEIPT OF YOUR LETTER
DATED MAY 18TH IN WHICH YOU STATE THAT YOUR
MEMBERSHIP AT A MEETING HELD MAY 16TH HAD
APPROVED A MEMORANDUM GIVEN TO LOCAL 117
REPRESENTATIVE BY YOUR DIRECTORS' ON MARCH 30TH.

THE MEMBERS OF LOCAL 117 BY A MAILED BALLOT VOTE ACCEPTED THE MEMORANDUM ON APRIL 29TH, 1972.

LOCAL 117 IS DESIROUS OF MEETING YOUR COMMITTEE AT THE EARLIEST POSSIBLE MOMENT TO FINALIZE AN AGREEMENT.

5. IT IS NOTED THAT NONE OF THE AFORESAID DOCUMENTS INDICATE THE TERM OF OPERATION OF THE AGREEMENT UPON WHICH THE UNION RELIED. IF THE PROVISIONS OF SECTION 44(1) WERE APPLIED TO THE DOCUMENTS WHICH THE TRADE UNION ASSERTS CONSTITUTE A COLLECTIVE AGREEMENT, SUCH AGREEMENT WOULD BE DEEMED TO CONTINUE IN OPERATION FOR A TERM OF ONE YEAR. ACCORDINGLY, IF THE AGREEMENT WERE TO COMMENCE ON MARCH 30, 1972, IT WOULD TERMINATE ON MARCH 29, 1973. HOWEVER, SUCH A FINDING WOULD BE CONTRARY TO THE EXPLICIT PROVISIONS OF THE MEMORANDUM OF AGREEMENT BETWEEN THE PARTIES. THE MEMORANDUM OF AGREEMENT CLEARLY INDICATES THAT THE PARTIES INTENDED THAT THEY WOULD NEGOTIATE AN AGREEMENT AND THAT THERE WERE FURTHER TERMS TO BE NEGOTIATED IN ADDITION TO THOSE SET OUT IN THE MEMORANDUM. IT WAS ALSO STIPULATED THAT FURTHER NEGOTIATIONS WOULD BE HELD BETWEEN THE EMPLOYER AND A COMMITTEE FROM THE UNION AND THAT FURTHER NEGOTIATION MEETINGS WOULD BE HELD.

6. EVEN IF WE WERE TO ASSUME THAT CHARLES W. IRVINE HAD THE NECESSARY STATUS TO NEGOTIATE AND ACT ON BEHALF OF THE TRADE UNION, IT IS CLEAR FROM THE DOCUMENTS RELIED UPON BY THE TRADE UNION IN THEIR AGREEMENT AS SET OUT IN THE DOCUMENTS WHICH FOLLOWED THE EXPIRATION OF THE COLLECTIVE AGREEMENT THAT EXPIRED ON APRIL 30, 1971 THAT THE PARTIES MERELY ENTERED INTO INTERIM ARRANGEMENTS WHICH WERE TO BE IN EFFECT UNTIL SUCH TIME AS A COLLECTIVE AGREEMENT WAS NEGOTIATED AND EXECUTED BY THE PARTIES. ACCORDINGLY, THE DOCUMENT DATED MARCH 30, 1972 WAS AN AGREEMENT TO ENTER INTO A COLLECTIVE AGREEMENT AND THE LETTERS FROM THE PARTIES DATED MAY 18, 1972 WERE MERELY AN AGREEMENT TO APPLY THE TERMS OF THE MEMORANDUM OF AGREEMENT AND, ACCORDINGLY, TO NEGOTIATE OTHER PROVISIONS OF AN AGREEMENT WHICH WOULD EVENTUALLY CONSTITUTE A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1) (E) OF THE LABOUR RELATIONS ACT. THE ACTIONS OF THE PARTIES TO IMPLEMENT THE INTERIM ARRANGEMENTS WERE CONSISTENT WITH THEIR AGREEMENT. ACCORDINGLY, THE LETTERS OF MAY 18 FROM EACH OF THE PARTIES (IF ASSUMED TO BE CONSISTENT WITH THE MEMORANDUM OF MARCH 30, 1972) ARE MERELY THE ACCEPTANCE BY THE PARTIES OF THE TERMS OF THE MEMORANDUM WHICH WAS AN AGREEMENT TO ENTER INTO A COLLECTIVE AGREEMENT.

7. WHILE THE INTERIM ARRANGEMENTS ARE MATTERS WHICH MIGHT WELL BE INCLUDED IN A COLLECTIVE AGREEMENT BETWEEN THE PARTIES, THERE CAN ONLY BE ONE COLLECTIVE AGREEMENT BETWEEN THE PARTIES. IT IS OBVIOUS FROM THE AGREEMENTS SET OUT IN THE DOCUMENTS REFERRED TO ABOVE THAT THE PARTIES INTENDED TO INCLUDE MORE THAN THOSE MATTERS WHICH HAD ALREADY BEEN AGREED UPON IN THEIR "COLLECTIVE AGREEMENT". ACCORDINGLY, UNTIL ALL ISSUES HAVE BEEN RESOLVED AND ALL AGREEMENTS REDUCED TO WRITING, IT CANNOT BE SAID THAT THE PARTIES HAVE ENTERED INTO A COL-

LECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) OF THE LABOUR RELATIONS ACT.

8. THE BOARD THEREFORE FINDS FOR THE REASONS GIVEN IN THE MARSLAND ENGINEERING LIMITED CASE, OLRB MONTHLY REPORT, APRIL 1970, P. 133, THAT THE DOCUMENTS RELIED UPON BY THE TRADE UNION DO NOT CONSTITUTE A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) OF THE LABOUR RELATIONS ACT.

9. ACCORDINGLY, IN ANSWER TO THE QUESTION REFERRED BY THE MINISTER TO THE BOARD, THE BOARD DETERMINES THAT THE MINISTER HAS NO AUTHORITY UNDER SECTION 37(4) OF THE LABOUR RELATIONS ACT TO APPOINT THE ARBITRATOR OR MAKE SUCH APPOINTMENTS AS ARE NECESSARY TO CONSTITUTE THE BOARD OF ARBITRATION AS REQUESTED BY THE TRADE UNION IN THIS CASE.

2411-72-U: BEN COFFEY (COMPLAINANT) V. THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: BEN COFFEY FOR THE COMPLAINANT; DONALD J.M. BROWN AND ROBERT D. WEILER FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 12, 1972.

1. THIS IS A COMPLAINT FILED BY THE COMPLAINANT ON AUGUST 14, 1972, PURSUANT TO SECTION 79 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES INTER ALIA THAT HE WAS DISCHARGED BY HAROLD BOWEN, THE GENERAL MANAGER OF THE RESPONDENT, ON AUGUST 12, 1971, BECAUSE OF HIS ACTIVITIES ON BEHALF OF THE REPRESENTATIVES' AND TECHNICAL STAFF UNION IN CONTRAVENTION OF SECTIONS 58(A) AND (C), AND 71(1) OF THE LABOUR RELATIONS ACT. THE COMPLAINANT'S DISCHARGE IS THE CORE AND ESSENCE OF HIS COMPLAINT. THE REMEDY WHICH THE COMPLAINANT IS SEEKING IS COMPENSATION FOR LOST EARNINGS AND EXPENSES INCURRED AS A RESULT OF HIS ALLEGED UNLAWFUL DISMISSAL AND AN AMOUNT EQUAL TO ONE YEAR'S SALARY AT 1973 RATES IN LIEU OF REINSTATEMENT.

2. THE COMPLAINANT GRIEVED HIS DISCHARGE UNDER THE PROVISIONS OF A COLLECTIVE AGREEMENT BETWEEN THE SAID UNION AND THE RESPONDENT. THE ARBITRATOR SELECTED BY THE PARTIES TO MAKE A DETERMINATION OF THE GRIEVANCE HELD HEARINGS ON OCTOBER 26, 1971, JANUARY 5 AND FEBRUARY 10, 1972. IN HIS AWARD DATED MAY 30, 1972, THE ARBITRATOR DEALT WITH ALL PERTINENT MATTERS RAISED BY THE COMPLAINANT IN THE INSTANT COMPLAINT. THE AWARD OF THE ARBITRATOR WAS THAT THE RESPONDENT HAD JUST CAUSE TO DISCHARGE THE GRIEVOR ON AUGUST 12, 1971, AND ACCORDINGLY DISMISSED THE GRIEVANCE.

3. IN LIGHT OF THE FACT THAT THE DISCHARGE OF THE COMPLAINANT

ON AUGUST 12, 1971 HAS BEEN DEALT WITH BY WAY OF ARBITRATION, THE INSTANT COMPLAINT WAS SCHEDULED FOR HEARING FOR THE PURPOSE OF PERMITTING THE COMPLAINANT TO SHOW CAUSE WHY THE BOARD SHOULD INQUIRE FURTHER INTO THE COMPLAINT. AT THAT HEARING THE BOARD ENTERTAINED THE REPRESENTATIONS OF THE COMPLAINANT AND THE RESPONDENT ON THIS MATTER.

4. THE ISSUES CONFRONTING THE BOARD ARE WHETHER THE BOARD HAS THE JURISDICTION TO INQUIRE INTO THE MERITS OF THE INSTANT COMPLAINT AND, IF SO, WHETHER IT SHOULD ASSERT ITS JURISDICTION TO MAKE SUCH AN INQUIRY WHEN AN ALTERNATIVE REMEDY BY WAY OF ARBITRATION NOT ONLY WAS AVAILABLE TO THE COMPLAINANT BUT, IN FACT, WAS UTILIZED BY HIM.

5. THE BOARD HAS CONSISTENTLY TAKEN THE POSITION THAT WHERE A REMEDY IS AVAILABLE TO AN AGGRIEVED PERSON BY WAY OF A GRIEVANCE AND ARBITRATION PROCEDURE UNDER A COLLECTIVE AGREEMENT, THE BOARD OUGHT NOT TO ENTERTAIN A COMPLAINT UNDER SECTION 79 (FORMERLY SECTION 65) UNLESS THERE ARE EXCEPTIONAL CIRCUMSTANCES. IN THE HEIST INDUSTRIAL SERVICES CASE, 63 CLLC 1123, THE BOARD QUOTED FROM AN EARLIER DECISION, DOMINION STORES LIMITED (BOARD FILE NO. 2858-61-U), AS FOLLOWS:

IN THE NATIONAL SHOWCASE COMPANY CASE, (1960) CCH CANADIAN LABOUR LAW REPORTS, 16,185, C.L.S. 76-715, THE BOARD HELD THAT WHERE A COMPLAINT RAISES THE ISSUE THAT A PERSON HAS BEEN DISCHARGED CONTRARY TO THE PROVISIONS OF A COLLECTIVE AGREEMENT, THE MATTER IS ONE TO BE DEALT WITH UNDER THE TERMS OF THE COLLECTIVE AGREEMENT AND NOT BY MEANS OF A HEARING BY THE BOARD UNDER SECTION 65 OF THE ACT. THE COMPLAINANT IN THIS CASE APPEARS TO BE DISSATISFIED WITH THE DISPOSITION OF HIS CASE BY THE TRADE UNION WHICH WAS HIS BARGAINING AGENT. AS THE BOARD HELD IN THE WALLACE BARNES COMPANY CASE, (1961) CCH CANADIAN LABOUR LAW REPORTS, 16,198, C.L.S. 76-742, WHERE EMPLOYEES HAVE CHOSEN A BARGAINING AGENT TO ACT ON THEIR BEHALF, THEY ARE BOUND BY ITS ACTIONS AND, IF A COLLECTIVE AGREEMENT EXISTS, BY THE TERMS OF THAT AGREEMENT. AN EMPLOYEE IN THESE CIRCUMSTANCES MUST SEEK RELIEF UNDER THE AGREEMENT AND NOT BY AN APPLICATION TO THIS BOARD.

6. BASED ON THE REPRESENTATIONS OF THE COMPLAINANT AND THE RESPONDENT, THE BOARD FINDS NO EXCEPTIONAL CIRCUMSTANCES IN THE PRESENT COMPLAINT WHICH WOULD CAUSE IT TO DEPART FROM ITS GENERAL POLICY. INDEED, AS STATED ABOVE, A REMEDY BY WAY OF A GRIEVANCE AND ARBITRATION PROCEDURE WAS NOT ONLY AVAILABLE BUT WAS USED BY THE COMPLAINANT AND THE RELIEF WHICH THE COMPLAINANT SOUGHT BY ARBITRATION ESSENTIALLY WAS

THE SAME FORM OF RELIEF WHICH THE COMPLAINANT IS SEEKING IN THE INSTANT CASE. IT APPEARS THAT THE REASON THAT THE COMPLAINANT HAS FILED THE INSTANT COMPLAINT IS BECAUSE HE WAS DISSATISFIED WITH THE RESULT OF THE ARBITRATION. THE GRIEVOR, IN FACT, IS ASKING THE BOARD TO SIT AS AN APPEAL TRIBUNAL ON THE AWARD OF THE ARBITRATOR. THE BOARD, HOWEVER, CLEARLY DOES NOT HAVE THE JURISDICTION TO EXERCISE SUCH AN APPELLATE FUNCTION, REGARDLESS OF ANY ALLEGED IMPROPRIETIES IN THE ARBITRATION PROCEEDINGS.

7. WE WOULD MENTION THAT IN AUGUST OF 1971 THE COMPLAINANT FILED A COMPLAINT UNDER SECTION 79 OF THE ACT NAMING HAROLD BOWEN AND THREE OFFICERS OF THE REPRESENTATIVES' AND TECHNICAL STAFF UNION AS RESPONDENTS. IN THAT COMPLAINT THE COMPLAINANT ALLEGED INTER ALIA CERTAIN HARASSMENT BY THE RESPONDENT BOWEN PRIOR TO HIS DISCHARGE BECAUSE OF HIS UNION ACTIVITIES CONTRARY TO THE ACT (BOARD FILE No. 845-71-U). BEFORE THE SCHEDULED HEARING TOOK PLACE THE COMPLAINANT REQUESTED LEAVE OF THE BOARD TO WITHDRAW HIS COMPLAINT IN VIEW OF THE FACT THAT HE WAS PROCEEDING BY WAY OF ARBITRATION AS A RESULT OF HIS SUBSEQUENT DISCHARGE. THE BOARD ACCDED TO THE COMPLAINANT'S REQUEST BY A DECISION DATED OCTOBER 19, 1971. IN HIS LETTER OF OCTOBER 15, 1971 REQUESTING LEAVE TO WITHDRAW THE EARLIER COMPLAINT, THE COMPLAINANT STATED THAT HIS WITHDRAWAL WAS WITHOUT PREJUDICE TO ANY FURTHER ACTION IT MIGHT BE NECESSARY FOR HIM TO TAKE "IN RELATION TO THE SUBSTANCE OF THE CHARGES". IN OUR VIEW, THE FACT OF THE COMPLAINANT'S REQUEST TO WITHDRAW HIS EARLIER COMPLAINT "WITHOUT PREJUDICE" HAS NO BEARING OR RELEVANCE ON THE BOARD'S DISPOSITION OF THE INSTANT COMPLAINT.

8. HAVING REGARD TO ALL OF THE FOREGOING, WE FIND THAT THE BOARD IS WITHOUT JURISDICTION TO INQUIRE INTO THE MERITS OF THE INSTANT COMPLAINT. FURTHER, EVEN ASSUMING THAT THE BOARD HAD JURISDICTION, WE ARE OF THE OPINION THAT IN ALL THE CIRCUMSTANCES THE BOARD OUGHT NOT TO INQUIRE FURTHER INTO THE COMPLAINT.

9. THE COMPLAINT ACCORDINGLY IS DISMISSED.

2276-72-U: THE TORONTO WESTERN HOSPITAL (APPLICANT) V. CANADIAN UNION OF GENERAL EMPLOYEES, PATRICK MURPHY, CYRIL JONES, ANTONIO MAONE, HERNANDO CORONELL, JOHN BOYD, ALFREDO MORELLI, EVA POMBO, MARIA CABRAL, IRENE BIMANN AND MICHAEL DYAL (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: R. B. POTTER AND D. S. AFFLECK FOR THE APPLICANT; GEORGE MILLER FOR THE RESPONDENTS.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER O. HODGES: DECEMBER 12, 1972.

1. THIS IS AN APPLICATION TO THE BOARD FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENTS FOR ALLEGED VIOLATIONS OF SECTIONS 63(2), 65 AND 67 OF THE LABOUR RELATIONS ACT AND SECTION 8 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT.

2. THE APPLICATION WAS MADE UNDER THE LABOUR RELATIONS ACT. AT THE COMMENCEMENT OF THE HEARING OF THE APPLICATION THE APPLICANT REQUESTED LEAVE OF THE BOARD TO AMEND THE APPLICATION TO MAKE IT AN APPLICATION ALSO UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. COUNSEL FOR THE RESPONDENT OPPOSED THE BOARD ALLOWING THE REQUESTED AMENDMENT. THE BOARD CONSIDERED THE SUBMISSIONS OF COUNSEL AND THE PARTICULAR NATURE OF THE ALLEGATIONS MADE IN THE APPLICATION. THE BOARD ALSO TOOK INTO ACCOUNT THE BOARD'S DECISION OF JULY 18, 1972 IN THE TORONTO WESTERN HOSPITAL CASE [1972] OLRB REP. 724 WHICH WAS AN APPLICATION MADE BY THE SAME APPLICANT FOR A DECLARATION THAT A STRIKE CALLED OR AUTHORIZED BY THE RESPONDENT TRADE UNION WAS UNLAWFUL. IN THAT APPLICATION THE APPLICANT REQUESTED THAT THE BOARD MAKE A SIMILAR AMENDMENT TO ITS APPLICATION AND THE BOARD ACCEDDED TO THAT REQUEST. HAVING REGARD TO THE FOREGOING CONSIDERATIONS AND THE FACT THAT THE BOARD WAS SATISFIED THAT THERE WOULD BE NO PREJUDICE TO THE RESPONDENTS BY ALLOWING THE PROPOSED AMENDMENT, THE BOARD RULED AT THE HEARING THAT IT WAS PREPARED TO HEAR THE APPLICATION AS ONE INTENDED TO BE BROUGHT UNDER BOTH THE LABOUR RELATIONS ACT AND THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. ACCORDINGLY, PURSUANT TO SECTION 58 OF THE BOARD'S RULES OF PROCEDURE AND SECTION 9 OF O. REG. 441, THE BOARD GRANTED LEAVE TO THE APPLICANT TO AMEND ITS APPLICATION AS REQUESTED.

3. COUNSEL FOR THE RESPONDENTS THEN SUBMITTED THAT COUNSEL FOR THE APPLICANT SHOULD BE REQUIRED TO ELECT AT THAT POINT AS TO WHETHER HE WAS PROCEEDING UNDER THE LABOUR RELATIONS ACT OR THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT ON THE GROUNDS THAT THE RESPONDENTS OTHERWISE WOULD BE PREJUDICED AS THEY WOULD NOT KNOW THE CASE THEY HAD TO MEET. THAT IS TO SAY, COUNSEL FOR THE RESPONDENTS ARGUED THAT HE WAS ENTITLED TO KNOW WHETHER THE EVIDENCE ADDUCED BY THE APPLICANT WAS IN SUPPORT OF THE ALLEGED VIOLATIONS OF THE LABOUR RELATIONS ACT OR THE ALLEGED VIOLATION OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. COUNSEL FOR THE APPLICANT SUBMITTED THAT THERE WAS NO REASON FOR HIM TO BE PUT TO SUCH AN ELECTION AND THAT THE APPLICANT WAS ENTITLED TO PROCEED UNDER BOTH ACTS. THE BOARD CONSIDERED THE REPRESENTATIONS OF COUNSEL AND ALSO TOOK INTO ACCOUNT THE POSITION STATED BY THE BOARD IN PARAGRAPH 15 OF ITS DECISION OF JULY 24, 1972 IN THE TORONTO WESTERN HOSPITAL CASE [1972] OLRB REP. 731 AT 738. THE BOARD THEREUPON RULED AT THE HEARING THAT IT INTENDED TO TREAT THE APPLICATION, AS AMENDED, IN THE FIRST INSTANCE, AS A PROCEEDING BROUGHT UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT.

4. THE BOARD NOTED AT THE TIME OF MAKING THE ABOVE RULING THAT WHETHER THE APPLICANT WAS ENTITLED TO THE RELIEF WHICH IT WAS SEEKING WITH RESPECT TO THE ALLEGED VIOLATIONS OF THE LABOUR RELATIONS ACT IN

A PROCEEDING UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, OR WHETHER ALL OR SOME OF THE OFFENCES ALLEGED TO HAVE BEEN COMMITTED UNDER THE FORMER ACT WOULD HAVE TO BE TREATED AS A SEPARATE PROCEEDING IN THIS APPLICATION UNDER THE LABOUR RELATIONS ACT, WAS A MATTER WHICH COULD BE THE SUBJECT OF ARGUMENT AT THE CONCLUSION OF THE HEARING OF THE APPLICATION AS A PROCEEDING UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT.

5. THE APPLICANT AND THE RESPONDENT UNION WERE PARTIES TO A COLLECTIVE AGREEMENT WHICH EXPIRED ON JULY 5, 1972. THE NAMED INDIVIDUAL RESPONDENTS, WITH THE EXCEPTION OF PATRICK MURPHY, WHO IS PRESIDENT OF THE RESPONDENT TRADE UNION, WERE COVERED BY THE SAID AGREEMENT. PRIOR TO THE EXPIRY OF THE COLLECTIVE AGREEMENT, THE RESPONDENT UNION SERVED NOTICE ON THE APPLICANT OF ITS DESIRE TO BARGAIN. SUBSEQUENT TO THE GIVING OF NOTICE THE BARGAINING COMMITTEE OF THE UNION, WHICH WAS COMPOSED OF ALL OF THE NAMED INDIVIDUAL RESPONDENTS, MET WITH THE BARGAINING COMMITTEE OF THE APPLICANT HOSPITAL ON MAY 18, 1972. UPON THE REQUEST OF THE UNION, THE MINISTER APPOINTED A CONCILIATION OFFICER WHO MET WITH THE PARTIES ON JULY 4, 1972. FURTHER MEETINGS WERE CALLED BY THE CONCILIATION BRANCH OF THE MINISTRY OF LABOUR ON JULY 6 AND 7. A MEETING WAS HELD, AT THE REQUEST OF MR. MURPHY, BETWEEN THE BARGAINING COMMITTEES OF THE HOSPITAL AND THE UNION DURING THE NIGHT OF JULY 11 UNTIL THE EARLY MORNING OF JULY 12 ON THE PREMISES OF THE HOSPITAL.

6. THE EVIDENCE IS THAT JAMES B. McAULAY, THE EXECUTIVE DIRECTOR OF THE HOSPITAL, ADVISED MR. MURPHY BEFORE THE MEETING COMMENCED, HOWEVER, THAT THE HOSPITAL WOULD ONLY CONTINUE NEGOTIATION SO LONG AS A WORK STOPPAGE DID NOT OCCUR. IT APPEARS FROM THE EVIDENCE THAT MR. MURPHY AGREED TO THIS CONDITION. ALL OF THE NAMED INDIVIDUAL RESPONDENTS, WITH THE EXCEPTION OF ANTONIO MAONE, WERE IN ATTENDANCE AT THIS MEETING. NEGOTIATIONS BETWEEN THE TWO COMMITTEES CONTINUED FROM 11:30 P.M. ON JULY 11 UNTIL APPROXIMATELY 5:00 A.M. ON JULY 12. WITHOUT GOING INTO DETAIL, AT ABOUT THAT TIME THERE WAS A "BREAK-UP" IN THE NEGOTIATIONS AND THE UNIONS'S BARGAINING COMMITTEE LEFT THE PREMISES OF THE HOSPITAL. SHORTLY THEREAFTER EMPLOYEES OF THE HOSPITAL IN THE BARGAINING UNIT, INCLUDING MEMBERS OF THE BARGAINING COMMITTEE, COMMENCED TO PICKET THE HOSPITAL. ACCORDING TO THE EVIDENCE, ALL OF THE MEMBERS OF THE BARGAINING COMMITTEE, WITH THE EXCEPTION OF IRENE BIMANN AND MICHAEL DYAL, WERE SEEN ON THE PICKET LINE DURING THE MORNING OF JULY 12. IRENE BIMANN WAS SEEN ON THE PICKET LINE, HOWEVER, ON THE MORNING OF JULY 13.

7. THE EVIDENCE IS THAT COMMENCING IN THE EARLY MORNING OF JULY 12 AND CONTINUING THROUGH JULY 27, OVER 300 BARGAINING-UNIT EMPLOYEES OF THE HOSPITAL WHO WERE SCHEDULED TO WORK DURING THAT PERIOD DID NOT REPORT FOR WORK.

8. BY TELEGRAM DATED JULY 15, 1972, THE HOSPITAL ADVISED THE NAMED RESPONDENTS THAT THEY WERE ENGAGING IN A STRIKE IN VIOLATION

OF THE LABOUR RELATIONS ACT AND THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT AND NOTIFIED THEM THAT THEIR EMPLOYMENT WITH THE HOSPITAL WAS IMMEDIATELY SUSPENDED INDEFINITELY UNTIL THE HOSPITAL HAD AN OPPORTUNITY TO REVIEW THE CIRCUMSTANCES OF THEIR CONDUCT. BY LETTER DATED JULY 25, 1972, SIGNED BY J. B. McAULAY, THE HOSPITAL ADVISED EACH OF THE ABOVE RESPONDENTS THAT THIS BOARD HAD RULED THAT CERTAIN EMPLOYEES OF THE HOSPITAL HAD ENGAGED IN AN UNLAWFUL STRIKE AND THAT THE RESPONDENT TRADE UNION HAD AUTHORIZED THAT UNLAWFUL STRIKE. THE LETTER WENT ON TO STATE THAT BECAUSE OF THEIR SPECIAL RESPONSIBILITIES AS MEMBERS OF THE NEGOTIATING COMMITTEE AND IN SOME INSTANCES BECAUSE THEY WERE EITHER UNION OFFICERS OR STEWARDS OR BOTH, THE HOSPITAL WAS ASKING THEM TO TAKE PROMPT AND EFFECTIVE MEASURES TO OBTAIN THE RETURN TO WORK OF THEIR FELLOW EMPLOYEES IN THE BARGAINING UNIT SO THAT NEGOTIATIONS COULD CONTINUE. THE SECOND PARAGRAPH OF THE LETTER TO EACH OF THE NAMED RESPONDENTS READS:

WE REFER TO OUR TELEGRAM TO YOU OF JULY 15TH, 1972, IN WHICH YOU WERE INFORMED OF YOUR SUSPENSION UNTIL A REVIEW OF YOUR CONDUCT HAD BEEN COMPLETED. ANY SUCH REVIEW MAY RESULT IN DISCIPLINARY ACTION AGAINST YOU, WHICH COULD INCLUDE YOUR DISCHARGE AS AN EMPLOYEE OF THE HOSPITAL. HOWEVER, WHEN THIS REVIEW IS MADE, YOUR COMPLIANCE OR LACK OF COMPLIANCE WITH THE ABOVE REQUEST WILL BE TAKEN INTO CONSIDERATION BY THE HOSPITAL. PENDING THE COMPLETION OF SUCH REVIEW, YOUR SUSPENSION REMAINS IN EFFECT, BUT IF IN THE MEANTIME NEGOTIATIONS ARE RESUMED YOU WOULD, OF COURSE, BE ENTITLED TO PARTICIPATE IN SUCH NEGOTIATIONS.

9. THE HOSPITAL SENT A FURTHER LETTER DATED JULY 27, 1972 TO EACH OF THE NAMED RESPONDENTS, SIGNED BY JAMES B. McAULAY, THE BODY OF WHICH READS IN PART:

ON JULY 25, 1972, THE HOSPITAL REQUESTED YOU BY REGISTERED MAIL TO TAKE PROMPT AND EFFECTIVE MEASURES TO OBTAIN THE RETURN TO WORK OF YOUR FELLOW EMPLOYEES IN THE BARGAINING UNIT. WE HAVE NO EVIDENCE THAT YOU HAVE TAKEN ANY EFFECTIVE MEASURES TO COMPLY WITH THIS REQUEST. THE HOSPITAL HAS NOW REVIEWED YOUR CONDUCT SINCE THE 12TH DAY OF JULY 1972.

YOU ARE HEREBY ADVISED THAT EFFECTIVE 12.00 NOON, THE 27TH DAY OF JULY, 1972, YOU HAVE BEEN DISMISSED FROM THE EMPLOY OF THE TORONTO WESTERN HOSPITAL FOR CAUSE.

10. WE WOULD MENTION THAT BY LETTER DATED JULY 24, 1972, THE

HOSPITAL ADVISED EACH OF THE RANK-AND-FILE EMPLOYEES IN THE BARGAINING UNIT WHO WERE ABSENT FROM WORK THAT THE STRIKE COMMENCING ON AND AFTER JULY 12 HAD BEEN DECLARED UNLAWFUL BY THE BOARD AND THAT UNLESS THEY RETURNED TO WORK BY JULY 26, THE HOSPITAL WOULD HAVE NO ALTERNATIVE BUT TO CONSIDER THEIR IMMEDIATE DISCHARGE FROM EMPLOYMENT. BY LETTER DATED JULY 27, THE HOSPITAL ADVISED EACH OF THE SAID EMPLOYEES, TOTALING OVER 300, WHO HAD NOT RETURNED TO WORK IN ACCORDANCE WITH THE JULY 24 DIRECTIVE THAT THEY WERE DISMISSED FROM THE EMPLOY OF THE HOSPITAL FOR CAUSE.

11. ALFREDO MORELLI, JOHN BOYD, HERNANDO CORONELL AND MARIA CABRAL WERE SCHEDULED TO WORK ON JULY 12, 13 AND 14, 1972. IRENE BIMANN WAS NOT SCHEDULED TO WORK ON JULY 12 BUT WAS SCHEDULED TO WORK ON JULY 13 AND 14. CYRIL JONES WAS SCHEDULED TO WORK ON JULY 12 AND 13 BUT NOT ON JULY 14. MICHAEL DYAL WAS NOT SCHEDULED TO WORK ON JULY 12 AND 13 BUT WAS SCHEDULED TO WORK ON JULY 14. THE EVIDENCE IS THAT NONE OF THE ABOVE NAMED RESPONDENTS REPORTED FOR WORK FROM JULY 12 TO 14, INCLUSIVE, ON THE DAYS ON WHICH THEY WERE SCHEDULED TO WORK. WE WOULD MENTION THAT EVA POMBO WAS ON SCHEDULED VACATION FROM JULY 3 TO 17 AND ANTONIO MAONE WAS ON SCHEDULED VACATION FROM JULY 3 TO 24.

12. THE APPLICANT IS A HOSPITAL WITHIN THE MEANING OF SECTION 1(1)(A) OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. FURTHER, THE NAMED RESPONDENTS, WITH THE EXCEPTION OF PATRICK MURPHY, UNTIL JULY 27, 1972, WERE HOSPITAL EMPLOYEES WITHIN THE MEANING OF SECTION 1(1)(B) OF THE SAID ACT. ON THE BASIS OF THE EVIDENCE ADDUCED, THE APPLICANT HAS ESTABLISHED A PRIMA FACIE CASE THAT ALFREDO MORELLI, JOHN BOYD, HERNANDO CORONELL, AND MARIA CABRAL ENGAGED IN A STRIKE ON JULY 12, 13, AND 14, 1972, THAT IRENE BIMANN ENGAGED IN A STRIKE ON JULY 13 AND 14, 1972, THAT CYRIL JONES ENGAGED IN A STRIKE ON JULY 12 AND 13, 1972, AND THAT MICHAEL DYAL ENGAGED IN A STRIKE ON JULY 14, 1972, WITHIN THE MEANING OF SECTION 1(1)(M) OF THE LABOUR RELATIONS ACT. SECTION 8(1) OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT FORBIDS HOSPITAL EMPLOYEES TO ENGAGE IN A STRIKE. ACCORDINGLY, THE APPLICANT ALSO HAS ESTABLISHED A PRIMA FACIE CASE THAT THE STRIKE ENGAGED IN BY THE ABOVE-NAMED RESPONDENTS ON THE DATES SPECIFIED WAS UNLAWFUL.

13. WE WOULD MENTION THAT SINCE EVA POMBO AND ANTONIO MAONE WERE ON SCHEDULED HOLIDAYS DURING THE PERIOD FROM JULY 12 THROUGH JULY 14, IT CANNOT BE SAID THAT THEY ENGAGED IN STRIKE ACTIVITY DURING THIS PERIOD. FURTHER, SINCE THE HOSPITAL SUSPENDED ALL OF THE SAID NAMED RESPONDENTS FROM THEIR EMPLOYMENT WITH THE HOSPITAL ON JULY 15 AND SUBSEQUENTLY DISCHARGED THEM ON JULY 27, IT CANNOT BE SAID THAT ANY OF THE NAMED RESPONDENTS ENGAGED IN AN UNLAWFUL STRIKE ON AND AFTER JULY 15, 1972.

14. ALL OF THE NAMED RESPONDENTS, INCLUDING PATRICK MURPHY, WERE MEMBERS OF THE NEGOTIATING COMMITTEE OF THE RESPONDENT TRADE

UNION. FURTHER, THE UNDISPUTED EVIDENCE CALLED BY THE APPLICANT IS THAT CYRIL JONES IS ALSO BOTH VICE-PRESIDENT AND STEWARD OF THE RESPONDENT UNION, THAT JOHN BOYD IS RECORDING SECRETARY AND STEWARD OF THE RESPONDENT UNION, AND THAT HERNANDO CORONELL AND ANTONIO MAONE ARE UNION STEWARDS OF THE RESPONDENT TRADE UNION.

15. COUNSEL FOR THE RESPONDENT SUBMITS, INTER ALIA, THAT EVEN IF THE BOARD SHOULD FIND THAT THE NAMED RESPONDENTS ENGAGED IN AN UNLAWFUL STRIKE, THAT HAVING REGARD TO THE FACT THAT THE HOSPITAL SUSPENDED THEM FROM THEIR EMPLOYMENT ON JULY 15, 1972 AND SUBSEQUENTLY DISCHARGED THEM ON JULY 27, 1972, TOGETHER WITH OVER 300 OTHER BARGAINING-UNIT EMPLOYEES, THE BOARD, IN THE EXERCISE OF ITS DISCRETION, SHOULD NOT GRANT LEAVE TO THE APPLICANT HOSPITAL TO INSTITUTE PROSECUTIONS OF THE SAID RESPONDENTS SINCE THE SAID RESPONDENTS HAVE ALREADY SUFFERED THE ULTIMATE INDUSTRIAL PENALTY, NAMELY THE TERMINATION OF THEIR EMPLOYMENT. COUNSEL FOR THE APPLICANT, ON THE OTHER HAND, SUBMITS THAT THE NAMED RESPONDENTS ENGAGED IN STRIKE ACTIVITY ON AND AFTER JULY 12 WITH FULL KNOWLEDGE THAT THEIR ACTION WAS UNLAWFUL. FURTHER, COUNSEL SUBMITS THAT IT WAS THE UNLAWFUL STRIKE ACTION BY THE NAMED RESPONDENTS WHICH LED THE REMAINING BARGAINING-UNIT EMPLOYEES TO ENGAGE IN AN UNLAWFUL STRIKE. FOR THIS REASON, INTER ALIA, COUNSEL ARGUES THAT THE BOARD SHOULD CONSENT TO THE INSTITUTION OF THE PROSECUTION WHICH THE APPLICANT IS SEEKING.

16. WITH REFERENCE TO THE ABOVE SUBMISSION, WE WOULD POINT OUT THAT ACCORDING TO THE EVIDENCE RELATING TO A UNION MEETING OF THE BARGAINING-UNIT EMPLOYEES HELD ON JULY 5, THE EMPLOYEES, PRESUMABLY INCLUDING THE MEMBERS OF THE BARGAINING COMMITTEE, WERE MADE AWARE THAT ANY STRIKE ACTION ON THEIR PART WOULD BE CONTRARY TO THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. FURTHER, THE HOSPITAL POSTED NOTICES DATED JULY 7, 1972 ON THE EMPLOYEE BULLETIN BOARDS, ADVISING THE EMPLOYEES THAT ANY STRIKE ACTION TAKEN ON THEIR PART WOULD BE ILLEGAL AND THAT THEY WOULD BE SUBJECT TO PROSECUTION SHOULD THEY ENGAGE IN SUCH ACTION. MOREOVER, ACCORDING TO RAY BULGIN, THE ASSISTANT EXECUTIVE DIRECTOR OF THE HOSPITAL, HE PERSONALLY SPOKE TO FIVE MEMBERS OF THE BARGAINING COMMITTEE ON JULY 10, NAMELY HERNANDO CORONELL, ANTONIO MAONE, JOHN BOYD, CYRIL JONES AND MARIA CABRAL, ADVISING THEM THAT ANY STRIKE ACTION WOULD BE ILLEGAL AND HE WARNED THEM THAT IF THEY DID NOT REPORT FOR WORK OR DIRECTED OTHER EMPLOYEES NOT TO REPORT FOR WORK THAT THE HOSPITAL WOULD HAVE TO TAKE STEPS TO HAVE THEM DISCHARGED AND PROSECUTED.

17. THE NAMED INDIVIDUAL RESPONDENTS WERE ELECTED BY THE MEMBERS OF THE BARGAINING UNIT TO REPRESENT THEM IN COLLECTIVE BARGAINING FOR THE RENEWAL OF THE COLLECTIVE AGREEMENT WHICH EXPIRED ON JULY 5, 1972. WE ARE SATISFIED ON THE BASIS OF THE EVIDENCE THAT AT LEAST A WEEK PRIOR TO JULY 12, THE RESPONDENT MEMBERS OF THE BARGAINING COMMITTEE WERE APPRISED OF THE FACT THAT ANY STRIKE ACTION ON THEIR PART AND ON THE PART OF THE BARGAINING-UNIT EMPLOYEES WOULD BE UNLAWFUL. FURTHER, THE EVIDENCE INDICATES THAT NO LATER THAN JULY 10, THE BARGAINING COMMITTEE WAS AWARE OF THE POSSIBLE CONSEQUENCES OF ANY UNLAWFUL STRIKE ACTIVITY. NOTWITHSTANDING THIS FACT, WITH TWO EXCEPTIONS, ALL OF THE

NAMED INDIVIDUAL RESPONDENTS WERE SEEN ON THE PICKET LINE IN FRONT OF THE HOSPITAL ON THE MORNING OF JULY 12, SUBSEQUENT TO THE "BREAK-UP" OF THE NEGOTIATING SESSION WHICH HAD TAKEN PLACE DURING THE NIGHT AND EARLY MORNING OF JULY 11 AND 12, AND ALL BUT TWO OF THE SAID RESPONDENTS DID NOT REPORT FOR WORK AS SCHEDULED ON EITHER JULY 12, 13 OR 14. AS HAS ALREADY BEEN STATED, ON JULY 15 THE HOSPITAL SUSPENDED THE NEGOTIATING COMMITTEE FROM THEIR EMPLOYMENT AND ON JULY 27 THEIR EMPLOYMENT WITH THE HOSPITAL WAS TERMINATED.

18. THERE IS NO QUESTION IN OUR MIND THAT OFFICERS, OFFICIALS AND AGENTS OF A TRADE UNION BEAR A GREATER MEASURE OF RESPONSIBILITY THAN RANK-AND-FILE MEMBERS OF A BARGAINING UNIT TO SEE THAT THE LAW IS OBSERVED, AS THE LATTER LOOK TO THEIR REPRESENTATIVES FOR LEADERSHIP AND DIRECTION IN MATTERS PERTAINING TO LABOUR-MANAGEMENT RELATIONS. IN OUR VIEW, THIS ONUS RESTS HEAVILY ON THE OFFICERS AND OFFICIALS OF THE UNION WHO, IN THE INSTANT CASE, ARE PATRICK MURPHY, THE PRESIDENT OF THE RESPONDENT TRADE UNION, CYRIL JONES, THE VICE-PRESIDENT, JOHN BOYD, THE RECORDING SECRETARY, AND HERNANDO CORONELL AND ANTONIO MAONE, UNION STEWARDS. WE WOULD ADD THAT IN ADDITION TO BEING OFFICERS OF THE UNION, JONES AND BOYD ARE ALSO UNION STEWARDS. THE ONUS, PERHAPS TO A LESSER EXTENT, ALSO RESTS ON THE REMAINING MEMBERS OF THE BARGAINING COMMITTEE, NAMELY ALFREDO MORELLI, EVA POMBO, MARIA CASRAL, IRENE BIMANN AND MICHAEL DYAL.

19. THERE IS NO EVIDENCE, HOWEVER, THAT DISTINGUISHES THE ROLE PLAYED BY MEMBERS OF THE BARGAINING COMMITTEE WHO ARE OFFICERS OF THE RESPONDENT UNION FROM THE ROLE PLAYED BY MEMBERS OF THE BARGAINING COMMITTEE WHO ARE NOT OFFICERS OF THE UNION, WITH THE EXCEPTION OF THE PRESIDENT, PATRICK MURPHY. WE WOULD MAKE IT PERFECTLY CLEAR AT THIS POINT THAT THE BOARD IN NO WAY CONDONES ANY UNLAWFUL STRIKE ACTIVITY ENGAGED IN BY MEMBERS OF THE BARGAINING COMMITTEE, OR ANY OTHER OFFENCES WHICH THEY MAY HAVE COMMITTED UNDER EITHER THE LABOUR RELATIONS ACT OR THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. BE THAT AS IT MAY, THE MEMBERS OF THE BARGAINING COMMITTEE WERE ALL SUSPENDED FROM THEIR EMPLOYMENT ON JULY 15 AFTER THE UNLAWFUL STRIKE ACTIVITY AND WERE SUBSEQUENTLY DISCHARGED ON JULY 27. WHILE WE ARE NOT IN ANY WAY IMPUGNING OR JUDGING THE ACTION TAKEN BY THE HOSPITAL, THE FACT REMAINS THAT BY TERMINATING THEIR EMPLOYMENT THE HOSPITAL EXACTED THE ULTIMATE INDUSTRIAL PENALTY.

20. IN LIGHT OF ALL OF THE FOREGOING AND HAVING PARTICULAR REGARD TO THE EVIDENCE THAT ALL OUTSTANDING BARGAINING ISSUES BETWEEN THE HOSPITAL AND THE RESPONDENT UNION HAVE BEEN REFERRED TO A BOARD OF ARBITRATION FOR BINDING SETTLEMENT, AND TAKING INTO ACCOUNT ALSO THE INTENT OF THE LABOUR RELATIONS ACT AS SET OUT IN THE PREAMBLE WHICH APPLIES TO HOSPITAL EMPLOYERS, THEIR EMPLOYEES AND THE TRADE UNION WHICH REPRESENT THEM, WE ARE OF THE VIEW THAT THE INTERESTS OF BOTH DISPUTING PARTIES WOULD NOT BE BEST SERVED BY THE BOARD AT THIS TIME CONSENTING TO THE INSTITUTION OF A PROSECUTION OF THE FORMER EMPLOYEE MEMBERS OF THE BARGAINING COMMITTEE. ACCORDINGLY, IN THE EXERCISE OF OUR DISCRETION,

WE ARE NOT PREPARED TO GRANT LEAVE TO THE APPLICANT TO INSTITUTE A PROSECUTION OF THE SAID RESPONDENTS FOR AN ALLEGED VIOLATION OF SECTION 8 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. FOR THE SAME REASON, ASSUMING THAT THE BOARD HAS THE JURISDICTION IN A PROCEEDING UNDER THE ABOVE ACT, WE ALSO ARE NOT PREPARED TO CONSENT TO THE INSTITUTION OF A PROSECUTION FOR AN ALLEGED VIOLATION OF SECTIONS 63(2) AND 67 OF THE LABOUR RELATIONS ACT. THE APPLICATION AS IT RELATES TO THE FOREGOING SECTIONS OF THE TWO ACTS ACCORDINGLY IS DISMISSED.

21. VERY DIFFERENT CONSIDERATIONS APPLY IN THE CASE OF THE RESPONDENT UNION AS SUCH AND MORE SPECIFICALLY TO PATRICK MURPHY, THE PRESIDENT OF THE UNION, HAVING REGARD TO THE EVIDENCE OF HIS CONDUCT DURING THE COURSE OF BARGAINING AND MORE PARTICULARLY AT THE TIME THE UNLAWFUL STRIKE ACTIVITY OCCURRED ON AND AFTER JULY 12, 1972. THE EVIDENCE STRONGLY SUGGESTS THAT MR. MURPHY DOMINATED AND, IN LARGE MEASURE, MANIPULATED AND INFLUENCED THE COURSE OF ACTION FOLLOWED BY THE BARGAINING-UNIT EMPLOYEES OF THE HOSPITAL REPRESENTED BY THE RESPONDENT TRADE UNION ON AND AFTER JULY 12, 1972.

22. AS STATED EARLIER IN THIS DECISION, THE BOARD RULED THAT IT WAS TREATING THE INSTANT APPLICATION AS A PROCEEDING UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. SECTION 8(3) OF THAT ACT PROVIDES, INTER ALIA, THAT SECTION 65 OF THE LABOUR RELATIONS ACT APPLIES MUTATIS MUTANDIS TO A STRIKE BY HOSPITAL EMPLOYEES, TO WHOM THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT APPLIES, OR TO A LOCK-OUT BY THEIR EMPLOYERS. IN LIGHT OF THIS PROVISION, WE ARE OF THE OPINION THAT THE BOARD HAS JURISDICTION IN A PROCEEDING UNDER THE LATTER ACT TO CONSENT TO THE INSTITUTION OF A PROSECUTION FOR AN ALLEGED VIOLATION OF SECTION 65 OF THE LABOUR RELATIONS ACT. IN ANY EVENT, IT IS AT LEAST AN ARGUABLE QUESTION OF LAW.

23. THE BOARD ACCORDINGLY CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT TRADE UNION AND THE RESPONDENT PATRICK MURPHY FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

THAT THE RESPONDENT CANADIAN UNION OF GENERAL EMPLOYEES DID CONTRAVENE THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT IN THAT IT CALLED AND AUTHORIZED AN UNLAWFUL STRIKE OF THE BARGAINING-UNIT EMPLOYEES OF THE APPLICANT HOSPITAL, REPRESENTED BY THE SAID RESPONDENT, WHICH OCCURRED ON AND AFTER JULY 12, 1972.

THAT THE RESPONDENT PATRICK MURPHY DID CONTRAVENE THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT IN THAT HE COUNSELLED, PROCURED, SUPPORTED AND ENCOURAGED AN UNLAWFUL STRIKE OF THE BARGAINING-UNIT EMPLOYEES OF THE APPLICANT HOSPITAL, REPRESENTED BY THE RESPONDENT TRADE UNION, WHICH OCCURRED ON AND AFTER JULY 12, 1972.

24. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF BOARD MEMBER F. W. MURRAY: DECEMBER 12, 1972.

1. I DISSENT.

2. THE MAJORITY DECISION OUTLINES ALL OF THE MATERIAL EVIDENCE AND I AM IN ACCORD WITH THE CONCLUSIONS REACHED BY THE MAJORITY IN GRANTING CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT TRADE UNION AND THE RESPONDENT PATRICK MURPHY WITH RESPECT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT.

3. IT IS WITH RESPECT TO THE CONSENT TO INSTITUTE A PROSECUTION AGAINST CERTAIN OF THE NAMED RESPONDENTS THAT I DO NOT AGREE WITH THE MAJORITY. TO CONCLUDE THAT THE HOSPITAL, IN TERMINATING THEIR EMPLOYMENT, EXECUTED THE "ULTIMATE INDUSTRIAL PENALTY" IS TO CONCLUDE THAT IN ALL CASES WHERE THE EMPLOYER TERMINATES EMPLOYMENT OF THOSE WHO ARE IN CONTRAVENTION OF THE LABOUR RELATIONS ACT, WHICH IS AFTER ALL AN ACT DEALING WITH INDUSTRIAL RELATIONS IN ONTARIO, IS TO CONCLUDE THAT CONSENT TO PROSECUTE WILL NOT BE GRANTED IN ANY CASE WHERE AN EMPLOYER TERMINATES THE EMPLOYMENT OF THOSE WHO ARE IN LARGE PART RESPONSIBLE AND CERTAINLY A PARTY TO THE ACT OR ACTS CONTRAVENING THE LABOUR RELATIONS ACT. IN MY OPINION, THE ACT CLEARLY CONTEMPLATES THAT AN APPLICATION FOR CONSENT TO PROSECUTE SHOULD MEAN THAT IT IS UP TO THE COURTS TO DECIDE IF THERE IS TO BE A FURTHER PENALTY AND THAT THE BOARD IS EXCEEDING ITS DISCRETIONARY POWERS IN DENYING AN APPLICANT THE OPPORTUNITY TO REFER THIS QUESTION TO THE COURTS.

4. THE APPLICANT HOSPITAL IN THIS CASE BOTH VERBALLY AND IN WRITING REPEATEDLY URGED THE OFFICERS AND BARGAINING COMMITTEE NOT TO CEASE WORK AND NOT TO DIRECT OTHER EMPLOYEES NOT TO REPORT FOR WORK. DESPITE THESE REPEATED REQUESTS, THE EVIDENCE IS QUITE CLEAR THAT THESE SAME PERSONS WERE THE LEADERS OF THE BARGAINING UNIT WHO CALLED AND AUTHORIZED, SUPPORTED AND ENCOURAGED THE UNLAWFUL STRIKE AND THAT WITH THE EXCEPTION OF EVA POMBO AND ANTONIO MAONE, ALL ENGAGED IN AN UNLAWFUL STRIKE.

5. IN MY OPINION, TO RELY ON THE NOTION THAT THEY WERE MISLED BY THE PRESIDENT OF THE UNION IS NOT SUFFICIENT TO DENY CONSENT TO THE APPLICANT TO SEEK, IF NECESSARY BY WAY OF THE COURTS, THAT THE "ULTIMATE PENALTY" SHOULD BE IMPOSED.

6. HAVING REGARD FOR ALL OF THE EVIDENCE AND THE FACT THAT ALL OUTSTANDING BARGAINING ISSUES BETWEEN THE HOSPITAL AND THE RESPONDENT UNION HAVE BEEN REFERRED TO A BOARD OF ARBITRATION, I WOULD CONCLUDE THAT THE BOARD SHOULD NOT EXERCISE DISCRETION IN THE INSTANT CASE, BUT INSTEAD WOULD HAVE CONCLUDED THAT THE BOARD, IN KEEPING WITH THE INDUSTRIAL RELATIONS LEGISLATION OF THE PROVINCE, SHOULD HAVE GRANTED CONSENT TO THE APPLICANT TO INSTITUTE A PROSECUTION AGAINST ALL OF THE NAMED INDIVIDUALS FOR COUNSELLING, PROCURING, SUPPORTING AND EN-

COURAGING AN UNLAWFUL STRIKE OF THE FULL BARGAINING-UNIT EMPLOYEES OF THE APPLICANT HOSPITAL WHICH OCCURRED ON AND AFTER JULY 12, 1972.

2573-72-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) V. PLAYTEX LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: MARTIN LEVINSON AND V. MUSTARD FOR THE APPLICANT; A. P. TARASUK AND J. T. HEATHER FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 13, 1972.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE BOARD DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER THE APPLICANT MADE CERTAIN ALLEGATIONS AGAINST THE RESPONDENT AND REQUESTED THAT THE REPRESENTATION VOTE BE SET ASIDE. AT THE HEARING IT WAS ESTABLISHED THAT PRIOR TO THE TAKING OF THE REPRESENTATION VOTE THE APPLICANT AND THE RESPONDENT ENGAGED IN ELECTIONEERING AND PROPAGANDA THROUGH CERTAIN PUBLICATIONS. THE APPLICANT COMPLAINED THAT BY LETTER DATED OCTOBER 12, 1972 THE RESPONDENT, AFTER SETTING OUT CERTAIN ACTS WHICH THE RESPONDENT CONSIDERED TO BE DETRIMENTAL TO THE APPLICANT, ENDED THE LETTER AS FOLLOWS:

VOTE ON ELECTION DAY
VOTE - NO

2. IN ADDITION, THE APPLICANT COMPLAINED THAT THE RESPONDENT PUBLISHED A LETTER ADDRESSED TO THE EMPLOYEES IN THE LOCAL NEWSPAPER WHICH READS IN PART AS FOLLOWS:

THE DAY THAT THE VOTING WILL TAKE PLACE IS AN IMPORTANT DAY FOR YOU AND ME. THE REASON IS THAT THE OUTCOME OF THE ELECTION COULD CHANGE OUR RELATIONSHIP, WHICH HAS ALLOWED US TO COMMUNICATE IN AN OPEN AND FRIENDLY MANNER - ON AN INDIVIDUAL BASIS. A UNION AT PLAYTEX WOULD CLEARLY PROHIBIT THE CONTINUANCE OF OUR INDIVIDUAL RELATIONSHIP WHICH WE HAVE HAD OVER THE PAST 19 YEARS - A SHOP STEWARD WOULD SPEAK ON YOUR BEHALF.

3. THE APPLICANT ACCORDINGLY ARGUED THAT SINCE THE RESPONDENT HAD DIRECTED THE EMPLOYEES TO VOTE AGAINST THE APPLICANT AND HAD STRESSED THAT THE RELATIONSHIP BETWEEN THE RESPONDENT AND THE EMPLOYEES

WOULD CHANGE IF THE APPLICANT SUCCEEDED, THE REPRESENTATION VOTE CONDUCTED IN THIS MATTER SHOULD BE SET ASIDE AND THAT A NEW VOTE BE DIRECTED.

4. SECTION 56 OF THE LABOUR RELATIONS ACT RECOGNIZES THAT AN EMPLOYER HAS FREEDOM TO EXPRESS HIS VIEWS "SO LONG AS HE DOES NOT USE COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE". IN THIS CASE, THE EMPLOYER DID NOT SAY ANYTHING IN THE LETTERS ADDRESSED TO THE EMPLOYEES WHICH COULD PROPERLY BE CHARACTERIZED AS COERCION, INTIMIDATION, THREAT OR PROMISE. IN ADDITION, WE ARE OF THE VIEW THAT THE STATEMENT THAT THE RELATIONSHIP BETWEEN THE RESPONDENT AND ITS EMPLOYEES WOULD CHANGE IN THAT THE EMPLOYEES WOULD NO LONGER BE ABLE TO DEAL WITH THE EMPLOYER ON AN INDIVIDUAL BASIS AND THAT THE UNION WOULD SPEAK ON BEHALF OF THE EMPLOYEES IS SUBSTANTIALLY CORRECT IN SO FAR AS IT REFERS TO LABOUR RELATIONS MATTERS. A TRADE UNION, ONCE CERTIFIED, BECOMES THE SOLE COLLECTIVE BARGAINING AGENT FOR ALL THE EMPLOYEES IN THE BARGAINING UNIT AND IS ENTITLED TO REPRESENT THE EMPLOYEES IN THEIR EMPLOYMENT RELATIONSHIP WITH THEIR EMPLOYER. ACCORDINGLY, IT CANNOT BE SAID THAT THE STATEMENT REFERRED TO ABOVE CONSTITUTED UNDUE INFLUENCE.

5. APART FROM ANY ELECTIONEERING OR PROPAGANDA PUBLISHED BY AN EMPLOYER, IT IS TO BE ASSUMED THAT EMPLOYEES RECOGNIZE THAT THE EMPLOYER IS NOT USUALLY IN FAVOUR OF HAVING TO DEAL WITH THE EMPLOYEES THROUGH A TRADE UNION. ACCORDINGLY, IT OUGHT NOT BE A SURPRISE TO THE EMPLOYEES WHEN THE EMPLOYER INDICATES THAT HE WOULD LIKE TO HAVE THE EMPLOYEES VOTE AGAINST THE TRADE UNION. AN INVITATION TO EMPLOYEES TO VOTE AGAINST THE TRADE UNION DELIVERED IN WRITING IN THE ABSENCE OF ANY SURROUNDING FACTS OR CIRCUMSTANCES WHICH WOULD CAUSE THE EMPLOYEES TO PLACE UNDUE EMPHASIS ON SUCH STATEMENT CANNOT BE CHARACTERIZED AS UNDUE INFLUENCE WITHIN THE MEANING OF SECTION 56 OF THE ACT. INDEED, EMPLOYEES MIGHT CONSIDER THE FACT THAT THE EMPLOYER IS OPPOSED TO DEALING WITH THEM THROUGH A TRADE UNION AS EVIDENCE OF THE FACT THAT UNION REPRESENTATION WOULD WORK TO THE DETRIMENT OF THE EMPLOYER AND TO THE ADVANTAGE OF THE EMPLOYEES. THE MERE EXPRESSION OF THE EMPLOYER'S OPINION IN SUCH MATTER, STANDING ALONE, IS PROTECTED BY THE PROVISIONS OF SECTION 56 OF THE ACT. THE ONLY PROHIBITION ON THE EMPLOYER WHEN EXPRESSING HIS VIEWS IS THAT SUCH EXPRESSION OF VIEWS DO NOT CONSTITUTE OR ARE NOT COUPLED WITH COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE.

6. THE FACTS OF THIS CASE ARE READILY DISTINGUISHED FROM THE FACTS IN THE CIMA LIMITED CASE, OLRB MONTHLY REPORT, MAY 1963, P. 100, WHICH WAS REFERRED TO BY THE APPLICANT. IN THAT CASE, THE EMPLOYER CREATED A FALSE AND IMPROPER ISSUE BY SUGGESTING THAT A VOTE AGAINST THE TRADE UNION WAS "AN EXPRESSION OF CONFIDENCE IN FAVOUR OF YOUR EMPLOYER". THE ONLY PROPER ISSUE IN A REPRESENTATION VOTE IS THE ONE SET OUT ON THE BALLOT AND THE ISSUE IN THIS CASE IS WHETHER THE EMPLOYEES WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT. THE ISSUE WHICH WAS PLACED BEFORE THE

EMPLOYEES IN THE REPRESENTATION VOTE WAS BROUGHT INTO FOCUS BY THE RESPONDENT IN THE PUBLICATION WHICH APPEARED IN THE LOCAL NEWSPAPER.

7. FOR THE ABOVE REASONS AND FOR THE REASONS GIVEN BY THE BOARD IN THE ALCAN BUILDING PRODUCTS LIMITED CASE [1971] OLRB REP. 806 AND THE VALLEY CITY MANUFACTURING COMPANY LIMITED CASE [1971] OLRB REP. 773, THE BOARD FINDS THAT THE APPLICANT HAS FAILED TO ESTABLISH THAT THE CONDUCT OF THE RESPONDENT HAS PREVENTED THE EMPLOYEES FROM FREELY EXPRESSING THEIR TRUE WISHES IN THE REPRESENTATION VOTE CONDUCTED IN THIS MATTER. THE OBJECTIONS OF THE APPLICANT TO THE REPRESENTATION VOTE ARE ACCORDINGLY DISMISSED.

8. ON THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE DIRECTED BY THE BOARD NOT MORE THAN FIFTY PER CENT OF THE BALLOTS CAST WERE CAST IN FAVOUR OF THE APPLICANT.

9. THE APPLICATION IS THEREFORE DISMISSED.

10. THE BOARD WILL NOT ENTERTAIN AN APPLICATION FOR CERTIFICATION BY THE APPLICANT WITH RESPECT TO ANY OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY WITHIN THE PERIOD OF SIX MONTHS FROM THE DATE HEREOF.

11. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

(INADVERTENTLY DELETED FROM THE OCTOBER 1972 MONTHLY REPORT).

2229-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. INDUSTRIAL-MINE INSTALLATIONS LIMITED (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1687 (INTERVENER) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (INTERVENER) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: PETER G. KENNEDY AND JAMES KEUHL FOR THE APPLICANT; JOHN O'DONOGHUE FOR THE RESPONDENT; GUY ROBERGE AND JOHN MCINNIS FOR INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1687; W. G. PUNNETT AND REGIS AUGE FOR UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; P. E. GUERTIN FOR UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486.

DECISION OF THE BOARD:

OCTOBER 11, 1972.

1. THE NAME "INDUSTRIAL MINES INSTALLATIONS LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "INDUSTRIAL-MINE INSTALLATIONS LIMITED".

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT SEEKS A BARGAINING UNIT COMPOSED OF ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF SUDBURY WITH CERTAIN EXCEPTIONS THAT ARE NOT HERE MATERIAL. THE APPLICATION IS OPPOSED BY THE INTERVENERS ON THE BASIS THAT THE BARGAINING RIGHTS SOUGHT ARE HELD IN WHOLE OR IN PART BY THE DIFFERENT INTERVENERS. THE MATTER IS FURTHER COMPLICATED BY THE ALLEGATIONS THAT THE RESPONDENT HAS A RELATIONSHIP WHICH IS AS YET UNDETERMINED WITH A NUMBER OF OTHER COMPANIES AND THE INTERVENERS ARE ATTEMPTING TO USE SECTION 1(4) OF THE LABOUR RELATIONS ACT TO RELY ON THE BARGAINING RIGHTS THAT THEY HOLD WITH THOSE OTHER COMPANIES SO AS TO BAR THE APPLICANT.

4. DEALING FIRST WITH THE CLAIM BY THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 1687 (HEREINAFTER REFERRED TO AS THE "IBEW") IT APPEARS THAT THE IBEW WAS GRANTED A CERTIFICATE BY THIS BOARD ON JULY 29, 1969, FOR ALL EMPLOYEES OF I.M.I. UNDERGROUND CONTRACTORS LIMITED ELECTRICAL INSTALLATIONS WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING. ON JUNE 11, 1971, THE IBEW WAS GRANTED ANOTHER CERTIFICATE FOR ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF DEER MINE SERVICES LIMITED WITHIN A RADIUS OF THIRTY-FIVE MILES OF THE CITY OF SUDBURY. ON THEIR FACE, THE CERTIFICATES GRANTED TO THE IBEW ARE FOR DIFFERENT LIMITED COMPANIES FROM THE RESPONDENT AND BECAUSE THEY ARE SEPARATE AND IDENTIFIABLE LEGAL ENTITIES THERE APPEARS TO BE NO CONFLICT IN THE BARGAINING RIGHTS CLAIMED FROM THE RESPONDENT.

5. THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (HEREINAFTER REFERRED TO AS THE "UNITED BROTHERHOOD") ON BEHALF OF ITS LOCAL UNIONS AND DISTRICT COUNCILS ALSO APPEARS TO HAVE A COLLECTIVE AGREEMENT WITH THE ASSOCIATION OF MILLWRIGHTING CONTRACTORS OF ONTARIO AND THROUGH THAT CONTRACTOR'S ASSOCIATION WITH ALGOMA MAINTENANCE & SERVICES LIMITED WHICH IS ALSO A DIFFERENT LEGAL ENTITY FROM THE RESPONDENT. ON ITS FACE, THE UNITED BROTHERHOOD STANDS IN THE SAME POSITION AS THE IBEW, THAT IS, IT APPEARS THAT THERE IS NO CONFLICT IN THE BARGAINING RIGHTS IT HOLDS INSOFAR AS THE RESPONDENT COMPANY IS CONCERNED.

6. IN ADDITION, THE UNITED BROTHERHOOD CLAIMS THAT IT IS CERTIFIED FOR A COMPANY KNOWN AS INDUSTRIAL & MINE INSTALLATIONS (QUEBEC) LIMITED AND STATES THAT IT IS A RELATED COMPANY TO THE RESPONDENT COMPANY BECAUSE BOTH COMPANIES HAVE THE SAME ADDRESS, SAME DIRECTORS AND SAME LAWYERS.

7. THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (HEREINAFTER REFERRED TO AS "LOCAL 2486"), APART FROM ANY INTEREST IN THIS MATTER THAT MIGHT FLOW THROUGH THE COLLECTIVE AGREEMENT WITH THE ABOVE MENTIONED UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA HAS WITH ALGOMA MAINTENANCE & SERVICES LIMITED APPEARS TO HAVE LITTLE OR NO INTEREST IN THIS APPLICATION OTHER THAN IT WAS AN UNSUCCESSFUL APPLICANT FOR CERTIFICATION IN A CASE WITH THIS RESPONDENT ON JULY 7, 1968, WHICH WAS FOUR YEARS PRIOR TO THIS APPLICATION. ON THAT BASIS, WE ARE OF THE OPINION THAT LOCAL 2486 HAS NO STATUS IN THIS APPLICATION IN THE SENSE THAT AT THE DATE OF THE MAKING OF THE APPLICATION IT HAD NO CURRENT INTEREST THAT MIGHT BE AFFECTED.

8. THE INTERVENERS, AND MORE PARTICULARLY THE UNITED BROTHERHOOD SUGGEST THAT THIS IS A CASE WHERE AN EXAMINER SHOULD BE APPOINTED WITH A VIEW TO ASCERTAINING THE RELATIONSHIPS AMONG THE VARIOUS CORPORATE ENTITIES, IN ORDER THAT SECTION 1(4) OF THE LABOUR RELATIONS ACT MIGHT BE APPLIED. THAT SECTION PROVIDES:

1.-(4) WHERE, IN THE OPINION OF THE BOARD, ASSOCIATED OR RELATED ACTIVITIES OR BUSINESSES ARE CARRIED ON BY OR THROUGH MORE THAN ONE CORPORATION, INDIVIDUAL, FIRM, SYNDICATE OR ASSOCIATION, OR ANY COMBINATION THEREOF, UNDER COMMON CONTROL OR DIRECTION, THE BOARD MAY TREAT THE CORPORATIONS, INDIVIDUALS, FIRMS, SYNDICATES OR ASSOCIATIONS OR ANY COMBINATION THEREOF AS CONSTITUTING ONE EMPLOYER FOR THE PURPOSES OF THIS ACT.

9. SECTION 1(4) IS OBVIOUSLY CONTEMPLATED TO CURE THE MISCHIEF THAT RESULTS FROM BEING UNABLE TO PROPERLY DEFINE AND TIE DOWN THE EMPLOYMENT RELATIONSHIP. IN MANY SITUATIONS WHERE COMPANIES HAVE A CLOSE RELATIONSHIP AN EMPLOYEE MAY BE SHIFTED FROM ONE COMPANY TO ANOTHER SO THAT HIS EMPLOYMENT RELATIONSHIP, AT ANY GIVEN PERIOD, IS DIFFICULT TO DEFINE IN TERMS OF ONE EMPLOYER. SO TOO, THE NUMBER OF EMPLOYEES EMPLOYED BY ONE OF THOSE COMPANIES AT ANY GIVEN TIME MAY BE IMPOSSIBLE TO ASCERTAIN.

10. PRIOR TO THE ENACTMENT OF SECTION 1(4), WHERE SUCH SITUATIONS, EXISTED, IT WAS DIFFICULT TO DEFINE THE EMPLOYMENT RELATIONSHIP AND TO DETERMINE THE PROPER EMPLOYER FOR CERTAIN PURPOSES UNDER THE ACT. FOR EXAMPLE, IN CERTIFICATION PROCEEDINGS IT WAS NECESSARY TO DETERMINE THE PROPER EMPLOYER IN ORDER TO DETERMINE WHETHER THE UNION HAD SUFFICIENT MEMBERSHIP AMONG THE EMPLOYEES TO BE CERTIFIED.

11. ALSO, IN SOME SITUATIONS WHERE A UNION HAD BEEN GRANTED BARGAINING RIGHTS FOR THE EMPLOYEES OF ONE EMPLOYER, THE EMPLOYEES COULD BE SHIFTED TO ANOTHER ASSOCIATED OR RELATED EMPLOYER WITH THE RESULT THAT THE BARGAINING RIGHTS WHICH HAD BEEN EARNED BY THE TRADE UNION FOR THE EMPLOYEES WAS LOST.

12. SO TOO, IN THE CASE WHERE ASSOCIATED OR RELATED EMPLOYERS JOINED IN A COMMON ENTERPRISE AND USED ONE WORK FORCE, WHICH WAS SHIFTED AND TRANSFERRED FROM TIME TO TIME, THE CERTIFICATION WITH RESPECT TO ONE EMPLOYER ONLY WAS, IN EFFECT, A CERTIFICATION OF A SEGMENT OF THE TOTAL ENTERPRISE, AND COULD SERIOUSLY IMPAIR THE TOTALITY OF THE BUSINESS OPERATIONS BY INHIBITING THE SHIFTING OF EMPLOYEES BETWEEN UNION AND NON-UNION SEGMENTS OF THE ENTERPRISE. IT WAS ALSO POSSIBLE IN SITUATIONS WHERE ASSOCIATED OR RELATED COMPANIES CARRIED ON A SINGLE ENTERPRISE THAT EMPLOYEES OF THE SEPARATE LEGAL ENTITIES COULD BE REPRESENTED BY DIFFERENT TRADE UNIONS SO AS TO CAUSE THE BARGAINING RIGHTS WITHIN THE SINGLE ENTERPRISE TO BE UNDULY FRAGMENTED. AN EXAMPLE OF THE TYPE OF SITUATION WHERE SECTION 1(4) WAS APPLIED IS FOUND IN WALTERS LITHOGRAPHING COMPANY LIMITED, ET AL, [1971] OLRB REP. 406.

13. IT IS IN THESE TYPE OF SITUATIONS THAT THE INTERESTS OF THE PARTIES IN HAVING THE BOARD TREAT SEPARATE EMPLOYERS AS CONSTITUTING ONE EMPLOYER FOR THE PURPOSE OF THE ACT BECAME APPARENT, AND IT IS FOR THAT REASON THAT SECTION 1(4) WAS ENACTED.

14. THE PROBLEM IN THIS CASE IS NOT THE APPLICATION OF SECTION 1(4) BUT ITS APPLICATION ON A PIECEMEAL BASIS AFTER BARGAINING RIGHTS HAVE ALREADY BEEN OBTAINED WITH RESPECT TO SOME OF THE SEPARATE ENTITIES. IN SITUATIONS WHERE THE BOARD HAS PREVIOUSLY GRANTED A CERTIFICATE, THE INTERVENERS ARE IN EFFECT ASKING US TO REVIEW THE EARLIER DECISIONS OF THIS BOARD - THAT IS A POWER THAT IS USUALLY EXERCISED BY THE SAME PANEL OF THE BOARD THAT ORIGINALLY HEARD THE MATTER. THE MATTER IS FURTHER COMPLICATED BECAUSE SOME OF THE EARLIER CERTIFICATES WERE GRANTED WHEN SECTION 1(4) WAS NOT ENACTED. IN OTHER SITUATIONS THERE WAS AMPLE OPPORTUNITY TO SEEK THE RELIEF NOW REQUESTED AT THE TIME OF THE ORIGINAL APPLICATION.

15. IN THE SITUATION WHERE THERE IS A COLLECTIVE AGREEMENT, THE PARTIES HAVE HAD THE OPPORTUNITY TO NEGOTIATE TO REMOVE ANY DIFFICULTIES INHERENT BECAUSE OF THE ASSOCIATED OR RELATED COMPANY SITUATION. THEY DID NOT DO SO WHICH INDICATES THAT THE PROBLEM WAS NOT PRESSING. MOREOVER, IF WE WERE TO APPLY SECTION 1(4) IN A SITUATION WHERE THERE WAS A COLLECTIVE AGREEMENT, WOULD WE THEN DETERMINE THAT THE RELATED OR ASSOCIATED COMPANY WAS A PARTY TO THE EXISTING COLLECTIVE AGREEMENT? THIS IS PARTICULARLY DIFFICULT IN THIS SITUATION WHERE THERE IS AN AGREEMENT WITH THE ASSOCIATION OF MILLWRIGHTING CONTRACTORS OF ONTARIO WHICH IS A TRADE ASSOCIATION, AND IT IS NOT A PARTY TO THESE PROCEEDINGS NOR ARE THE VARIOUS COMPANIES WHICH ARE CLAIMED TO BE ASSOCIATED OR RELATED TO THE APPLICANT.

16. WE NOTE THAT IN EXCELLENCE ELECTRICAL CONSTRUCTION [1972] OLRB REP. 44, THAT THERE WAS A REQUEST MADE THAT TWO COMPANIES BE MADE PARTIES TO THE APPLICATION SOME SIX MONTHS AFTER THE COMMENCEMENT OF THE APPLICATION FOR THE PURPOSE OF THE BOARD ENTERTAINING A REQUEST UNDER SECTION 1(4) OF THE ACT. AT THAT TIME THE BOARD STATED:

"IF THE BOARD WERE TO ACCEDE TO THE WISHES OF THE APPLICANT IT WOULD BE SANCTIONING THE DELAY OF THE APPLICANT IN ASKING THAT THESE TWO ENTITIES BE MADE PARTIES TO THIS PROCEEDING AND IT WOULD NECESSITATE THE COMMENCEMENT OF THIS APPLICATION AGAIN SO AS TO AFFORD ALL THE POTENTIALLY AFFECTED PERSON AN OPPORTUNITY TO MAKE THEIR REPRESENTATIONS TO THE BOARD. IN OUR VIEW IT WOULD NOT BE IN THE BEST INTERESTS OF LABOUR RELATIONS TO ACCEDE TO THE WISHES OF THE APPLICANT."

17. IT IS OBVIOUS FROM THE FOREGOING THAT WHERE THE BOARD IS ASKED TO APPLY SECTION 1(4) IT IS DESIRABLE THAT THE SECTION BE APPLIED WHERE THE SITUATION IS FRESH, I.E., AND WHERE THERE ARE NO OUTSTANDING BARGAINING RIGHTS IN ORDER THAT SOME GLOBAL DETERMINATION BE MADE. THE RESULT OF APPLYING SECTION 1(4) WHERE INROADS HAVE BEEN MADE BY SEPARATE TRADE UNIONS INTO AN EXISTING ASSOCIATED OR RELATED ENTERPRISE IS UNSATISFACTORY. SUCH AN APPLICATION OF THE SECTION MIGHT RESULT IN AMENDING OR REVOKING EXISTING BARGAINING RIGHTS AND UPSET MANY RIGHTS, DUTIES AND OBLIGATIONS THAT MAY HAVE BEEN RESOLVED THROUGH PRIVATE NEGOTIATION TO THE POINT WHERE THEY HAVE FOUND THEIR WAY INTO EXISTING COLLECTIVE AGREEMENTS. AN INTERESTING EXAMPLE - INTERESTING BECAUSE IT APPEARS TO INVOLVE COMPANIES WHICH ARE SAID TO BE INVOLVED IN THIS APPLICATION, MAY BE FOUND IN INDUSTRIAL-MINE INSTALLATIONS LIMITED AND I.M.I. UNDERGROUND CONTRACTORS LIMITED [1971] OLRB REP. 712. IN THAT CASE THE APPLICANT TRADE UNION CONTENDED THAT THE TWO NAMED RESPONDENTS FELL WITHIN THE PURVIEW OF SECTION 1(4) OF THE LABOUR RELATIONS ACT AND IN THAT SITUATION THE BOARD APPLIED SECTION 1(4) AND DETERMINED THAT THE TWO COMPANIES BE TREATED AS ONE EMPLOYER FOR THE PURPOSES OF THE ACT. THAT IS A SITUATION WHERE THERE WERE NO OUTSTANDING BARGAINING RIGHTS.

18. FURTHER, WE DO NOT THINK THAT SECTION 1(4) WAS INTENDED TO BE USED BY ONE TRADE UNION AS A BAR TO ANOTHER TRADE UNION OBTAINING BARGAINING RIGHTS IN A COMPANY WHERE THE FIRST TRADE UNION HELD NO EXISTING BARGAINING RIGHTS WHATSOEVER. WHERE THE TRADE UNION IS CONFRONTED WITH A SITUATION RAISED BY SECTION 1(4) IT HAS AN OBLIGATION TO ACT PROMPTLY AND WHERE RELATED OR ASSOCIATED EMPLOYERS ARE DESIROUS OF OBTAINING THE BENEFITS OF SECTION 1(4) THEY TOO MUST ACT PROMPTLY. IF THE PARTIES CHOOSE TO LEAVE EXPOSED BARGAINING RIGHTS IN A MULTI-ENTITY SITUATION THEY DO SO AT THEIR PERIL AND AT THE RISK THAT ANOTHER TRADE UNION MAY ENTER THE SITUATION AND CLAIM THOSE EXPOSED BARGAINING RIGHTS.

19. IN THE RESULT AND IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE WE DECLINE TO PROCEED AS THE INTERVENERS HAVE SUGGESTED AND THEIR MOTIONS TO APPLY SECTION 1(4) ARE DISMISSED. WE MIGHT ADD THAT UNDER SECTION 1(4) WE THINK THAT EVIDENCE SHOULD BE ADDUCED BEFORE THE BOARD RATHER THAN HAVING AN EXAMINER APPOINTED, BECAUSE THE NATURE OF THE ISSUES MAY INVOLVE COMPLEX LEGAL QUESTIONS AND FACTS WHICH MIGHT BETTER BE HEARD BY THE BOARD PROPER.

20. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF LEVACK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

21. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 14, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

22. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

2010-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. COMPAGNIE MIRON LTEE (RESPONDENT) V. UNITED CEMENT, LIME & GYPSUM WORKERS INTERNATIONAL UNION LOCAL 384 (INTERVENER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.J.F. ADE.

APPEARANCES AT THE HEARING: W.W. TILLER FOR THE APPLICANT; LAURENT CORRIVEAU FOR THE RESPONDENT; G.E. CORMIER FOR THE INTERVENER.

DECISION OF THE BOARD: DECEMBER 19, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. THE UNION IN THIS MATTER SEEKS A BARGAINING AGENT COMPOSED OF ALL TRUCK DRIVERS IN THE CITY OF OTTAWA WITH CERTAIN EXCEPTIONS. THE OTTAWA OPERATION OF THE RESPONDENT EMPLOYER APPEARS TO HAVE A RELATIONSHIP TO THE COMPANY OPERATIONS IN MONTREAL AND IT IS THE NATURE OF THE RELATIONSHIP WHICH CAUSES US SOME CONCERN AS TO WHETHER WE HAVE JURISDICTION.

2. THE EMPLOYER PRESENTLY HAS A CEMENT PLANT IN MONTREAL. PREVIOUSLY THE PREDECESSOR TO THE EMPLOYER HAD CARRIED ON BUSINESS IN GATINEAU, QUEBEC, AND THE INTERVENER IN THIS APPLICATION HAD BEEN CERTIFIED IN 1961 BY THE QUEBEC LABOUR RELATIONS BOARD FOR THE EMPLOYEES OF THE PREDECESSOR COMPANY. THE PARTIES THEN ENTERED INTO A SERIES OF COLLECTIVE AGREEMENTS AND A BARGAINING RELATIONSHIP HAS EXISTED BETWEEN THE PREDECESSOR COMPANY AND THE PRESENT EMPLOYER RESPONDENT TO THE DATE OF THIS APPLICATION. FOR THE PURPOSES OF THIS

APPLICATION NOTHING TURNS ON THE CHANGE OF CORPORATE ENTITIES AND THE PREDECESSOR COMPANY AND THE PRESENT EMPLOYER RESPONDENT ARE CONSIDERED TO BE ONE COMPANY FOR THE PURPOSES OF THIS MATTER.

3. THE COMPANY EXTENDED ITS OPERATIONS INTO FALLOWFIELD, ONTARIO. THE INTERVENER THEN BECAME THE BARGAINING AGENT FOR EMPLOYEES IN BOTH THE ONTARIO SITE AND THE OTTAWA SITE. INTERESTINGLY, IN 1966 AND 1967, THE PARTIES OBTAINED CONCILIATION SERVICES FROM THE DEPARTMENT OF LABOUR IN ONTARIO. IN 1968 THE PARTIES SIGNED A COLLECTIVE AGREEMENT WHICH RECOGNIZED THE UNION AS SOLE BARGAINING AGENT FOR ALL THE EMPLOYEES OF THE COMPANY AT GATINEAU, QUEBEC, AND AT FALLOWFIELD, ONTARIO. THE COMPANY THEN MOVED ITS CEMENT PLANT TO MONTREAL AND IT MAINTAINS ITS MAIN OPERATION AT THAT LOCATION. IT MAINTAINS A TERMINAL YARD IN HULL, QUEBEC, AND A TERMINAL FACILITY IN OTTAWA WHERE IT STORES CEMENT. AT OTTAWA, THERE IS A DISPATCHER WHO IS MANAGED FROM MONTREAL AND FOUR TRUCK DRIVERS. THE DRIVERS ARE THE SUBJECT OF THIS APPLICATION. THEY REPORT TO AND WORK FROM THE TERMINAL AT OTTAWA. THEY MAKE DELIVERIES IN OTTAWA, BUT THEY ALSO MAKE CONSIDERABLE DELIVERIES TO HULL AND THE GATINEAU DISTRICT IN QUEBEC. THERE ARE NO EMPLOYEES AT THE HULL FACILITY. THE COMPANY'S MAIN DELIVERIES ARE MADE FROM MONTREAL AND IT RECEIVES ORDERS AT MONTREAL. WHEN ORDERS ARE RECEIVED FROM THE HULL OTTAWA DISTRICT THEY ARE USUALLY LESS THAN A TRUCKLOAD. HOWEVER, IN ORDER TO MAKE THE BEST USE OF THEIR TRUCKS, THE COMPANY SENDS A FULL LOAD TO THE OTTAWA HULL DISTRICT WHICH DELIVERS ITS ORDER AND STORES THE EXCESS MATERIAL AT THE OTTAWA TERMINAL WHERE IT IS REDELIVERED AS IT BECOMES NECESSARY BY THE DRIVERS AT OTTAWA.

4. IT APPEARS TO BE SETTLED LAW THAT THIS BOARD HAS JURISDICTION OVER PERSONS RESIDING AND WORKING WITHIN THE PROVINCE, BUT THAT IT HAS NO JURISDICTION OVER PERSONS RESIDING AND WORKING OUTSIDE THE PROVINCE; LABOUR RELATIONS BOARD OF NEW BRUNSWICK V. EASTERN BAKERIES LTD. AND LOCAL UNION #76, TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, HELPERS AND MISCELLANEOUS WORKERS AND ATTORNEY-GENERAL OF NEW BRUNSWICK (1961) 26 D.L.R. (2D) 332; AND THE ONLY ISSUE NOW BEFORE US IS WHETHER THE EMPLOYEES RESIDING AND WORKING IN ONTARIO FORM AN APPROPRIATE BARGAINING UNIT. WE ARE SATISFIED FROM THE EVIDENCE BEFORE US THAT THE TERMINAL FACILITY AT OTTAWA IS SEPARATE AND INDEPENDENT. THE ONLY RELATIONSHIP BETWEEN THE TWO OPERATIONS IS THAT THE DISPATCHER RECEIVES INSTRUCTIONS FROM MONTREAL FROM TIME TO TIME. WE ARE THEREFORE SATISFIED THAT THE EMPLOYEES AT OTTAWA CONSTITUTE AN APPROPRIATE BARGAINING UNIT; SEE DOMTAR LIMITED, TRUCKING DIVISION (1970) OLRB MTHLY. REP. 495. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT DISPATCHER AND PERSONS ABOVE THE RANK OF DISPATCHER, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 30, 1972, THE TERMINAL

DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. IN THESE CIRCUMSTANCES, HOWEVER, SINCE THIS IS IN EFFECT A DISPLACEMENT OF BARGAINING AGENTS, AND BY THAT WE MEAN THAT THE APPLICANT IS SEEKING TO DISPLACE THE INTERVENER AS THE BARGAINING AGENT FOR THESE EMPLOYEES, WE THINK THAT IT IS APPROPRIATE THAT A REPRESENTATION VOTE BE ORDERED. HOWEVER, SINCE THE INTERVENER HAS REPRESENTED THE EMPLOYEES FOR A PERIOD IN EXCESS OF A YEAR IT HAS SUFFICIENT STATUS BEFORE THE BOARD FOR ITS NAME TO APPEAR ON THE BALLOT.

7. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

8. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT, TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AND THE INTERVENER, UNITED CEMENT, LIME & GYPSUM WORKERS INTERNATIONAL UNION LOCAL 384.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

2798-72-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. SQUARE D COMPANY CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

DECISION OF THE BOARD:

DECEMBER 21, 1972.

1. IN A LETTER TO THE BOARD DATED DECEMBER 8, 1972, THE APPLICANT HAS MADE REPRESENTATIONS TO THE BOARD CONCERNING THE ALLEGED CONDUCT OF THE RESPONDENT AT A MEETING CONDUCTED BY THE EXAMINER. THE BOARD HAS CONSIDERED THESE REPRESENTATIONS AND THE REPRESENTATIONS OF THE RESPONDENT ON THE MATTERS RAISED BY THE APPLICANT.

2. THE RESPONDENT IS ENTITLED TO HAVE ALL OF THE METHODS MEN EXAMINED INDIVIDUALLY AND IS UNDER NO COMPULSION TO AGREE TO A GROUPING OF THESE METHODS MEN AS SUGGESTED BY THE APPLICANT. IT MAY WELL BE, OF COURSE, THAT THESE METHODS MEN DO NOT EXERCISE IDENTICAL DUTIES AND RESPONSIBILITIES. SIMILARLY, THE FACT THAT THE RESPONDENT'S EXAMINATION OF THE METHODS MEN IS EXTENSIVE, DOES NOT IN ITSELF ENTITLE THE APPLICANT TO OBJECT. THE APPLICANT MAY, OF COURSE, OBJECT TO THE RELEVANCE OF QUESTIONS ASKED BY THE RESPONDENT. IN THESE CIRCUMSTANCES,

THE EXAMINER WILL RULE ON THE RELEVANCE OF SUCH QUESTIONS AND THE APPLICANT MAY OF COURSE APPEAL TO THE BOARD ON THESE RULINGS BY THE EXAMINER.

3. IN ALL OF THE CIRCUMSTANCES, THE REQUEST BY THE APPLICANT THAT THE EXAMINER, IN EFFECT, ISSUE AN INTERIM REPORT IS DENIED. THE EXAMINER IS DIRECTED TO PROCEED WITH HIS EXAMINATION AND THE APPLICANT MAY APPEAL TO THE BOARD ON RULINGS MADE BY THE EXAMINER WITH REFERENCE TO THE RELEVANCE OF QUESTIONS ASKED BY THE RESPONDENT.

2880-72-R: LUMBER AND SAWMILL WORKERS UNION LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. LORENZO NADEAU (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: E. ROVET AND E. HAUTALA FOR THE APPLICANT; K. R. VALIN AND L. NADEAU FOR THE RESPONDENT; C. NADEAU FOR THE OBJECTORS.

DECISION OF THE BOARD: DECEMBER 20, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT MISSANABIE, TOWNSHIP 46, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SCALERS, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE RESPONDENT FILED A LIST WHICH CONTAINS THE NAMES OF 38 PERSONS ALL OF WHOM ARE INCLUDED IN THE ABOVE DESCRIBED BARGAINING UNIT FOR PURPOSES OF THE COUNT. THE APPLICANT HAS SUBMITTED EVIDENCE OF MEMBERSHIP FOR 33 PERSONS, ALL OF WHOSE NAMES CORRESPOND TO THE NAMES APPEARING ON THE RESPONDENT'S LIST. THERE WAS ALSO FILED WITH THE BOARD A STATEMENT OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION BEARING THE NAMES OF 33 PERSONS, 20 OF WHOM ARE CLAIMED IN MEMBERSHIP BY THE APPLICANT UNION. IF THE BOARD WERE TO GIVE WEIGHT TO THE SAID STATEMENT THE APPLICANT WOULD HAVE UNQUALIFIED EVIDENCE OF MEMBERSHIP FOR LESS THAN THE 65 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT REQUIRED FOR OUTRIGHT CERTIFICATION. THE BOARD ACCORDINGLY INQUIRED INTO THE ORIGATION AND CIRCULATION OF THE STATEMENT OF DESIRE.

4. THE EVIDENCE OF CLAUDE NADEAU, WHO IS EMPLOYED BY THE RESPONDENT AS A SLASHER AND WHO IS ALSO THE SON OF LORENZO NADEAU, IS THAT HE DREW UP THE STATEMENT OF DESIRE IN CHAPLEAU, WITH THE ASSISTANCE OF A FRIEND OF THE FAMILY WHO IS ALSO THE OWNER OF A SAWMILL

OPERATION, ON MONDAY, NOVEMBER 27, 1972. THE FOLLOWING DAY HE SECURED THE SIGNATURES ON THE STATEMENT OF DESIRE IN THE BUNK HOUSES WHERE SOME OF THE EMPLOYEES LIVED OR AT THEIR HOMES. ON THURSDAY, NOVEMBER 30 HE REQUESTED AND SECURED THE PERMISSION OF THE RESPONDENT'S MANAGER OF ITS MISSANABLE OPERATIONS TO BE ABSENT FROM WORK THE NEXT DAY. ON THAT FRIDAY NADEAU DROVE THE 86 MILES TO CHAPLEAU AND MAILED THE STATEMENT OF DESIRE TO THE BOARD BY REGISTERED MAIL.

5. ACCORDING TO CLAUDE NADEAU'S TESTIMONY, HE PREPARED THE STATEMENT OF DESIRE UPON THE INSTIGATION OF HIS FRIEND IN CHAPLEAU. THE STATEMENT, HOWEVER, WAS NOT PREPARED AS A RESULT OF CONSULTATION WITH OR UPON THE URGING OF ANY OF THE RESPONDENT'S EMPLOYEES. FURTHER, ACCORDING TO NADEAU'S EVIDENCE, ALL OF THE EMPLOYEES WERE AWARE THAT HE WAS THE SON OF THE OWNER. IN OUR VIEW, THE EMPLOYEES WHO WERE APPROACHED BY NADEAU TO SIGN THE STATEMENT OF DESIRE WOULD HAVE REASON TO BELIEVE OR SUSPECT THAT WHETHER OR NOT THEY SIGNED THE STATEMENT OF DESIRE IN OPPOSITION TO THE APPLICATION FOR CERTIFICATION WOULD BECOME KNOWN TO THEIR EMPLOYER LORENZO NADEAU. FURTHER, IN OUR OPINION, THE SAID EMPLOYEES WOULD HAVE JUSTIFIABLE CAUSE TO BE APPREHENSIVE AS TO THEIR JOB SECURITY WITH THE RESPONDENT SHOULD THEY REFUSE TO SIGN THE STATEMENT. HAVING REGARD TO THE FOREGOING CONSIDERATIONS, WE ARE NOT PREPARED TO ACCEPT THE STATEMENT OF DESIRE AS REPRESENTING A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES WHO SIGNED IT. ACCORDINGLY, WE FIND THAT THE STATEMENT OF DESIRE DOES NOT SO QUALIFY OR CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

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1599-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE UNIVERSITY OF WESTERN ONTARIO (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: T.E. ARMSTRONG, F. KITCHEN AND W.A. ACTON FOR THE APPLICANT; B.H. STEWART, W.F. TRIMBLE AND R.F. TOTTEN FOR THE RESPONDENT.

DECISION OF THE BOARD:

DECEMBER 20, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. IN THIS MATTER THE APPLICANT SEEKS A BARGAINING UNIT COMPOSED OF NON-PROFESSIONAL EMPLOYEES, EMPLOYED IN THE LIBRARIES, WITH CERTAIN EXCEPTIONS THAT ARE NOT HERE MATERIAL. A PRE-HEARING REPRESENTATION VOTE WAS TAKEN IN A VOTING CONSTITUENCY FIXED BY THE BOARD.

IT WAS ORDERED THAT THE BALLOT BOX BE SEALED AND THE BALLOTS NOT COUNTED PENDING FURTHER DIRECTION. SUBSEQUENTLY, AN EXAMINER WAS APPOINTED TO INQUIRE INTO AND TO REPORT ON THE APPROPRIATENESS OF THE BARGAINING UNIT AND THE PARTIES THEN MADE ORAL REPRESENTATIONS TO THE BOARD.

3. THE ISSUE TURNS ON WHETHER THE NON-PROFESSIONAL EMPLOYEES IN THE LIBRARY CONSTITUTE AN APPROPRIATE BARGAINING UNIT IN THEMSELVES OR WHETHER THEY SHOULD BE INCLUDED IN A BARGAINING UNIT COMPOSED OF ALL SECRETARIAL, CLERICAL AND OFFICE STAFF OF THE UNIVERSITY.

4. THE BOARD HAS ON OTHER OCCASIONS FOUND THAT A BARGAINING UNIT COMPOSED OF NON-PROFESSIONAL LIBRARY EMPLOYEES AT A UNIVERSITY IS AN APPROPRIATE BARGAINING UNIT WITHIN THE MEANING OF THE ACT. CANADIAN UNION OF PUBLIC EMPLOYEES V. THE GOVERNORS OF THE UNIVERSITY OF TORONTO, ET AL [1969] FEBRUARY OLRB MTHLY. REP. 1149; THE BOARD OF GOVERNORS RYERSON POLYTECHNICAL INSTITUTE [1972] JUNE OLRB MTHLY. REP. 651; SEE ALSO QUEEN'S UNIVERSITY AT KINGSTON [1970] JUNE OLRB MTHLY. REP. 250 (AGREED).

5. THE ISSUE MORE BROADLY STATED IS WHETHER THIS BOARD HAVING FOUND THAT A BARGAINING UNIT COMPOSED OF NON-PROFESSIONAL LIBRARY EMPLOYEES TO BE APPROPRIATE ON PREVIOUS OCCASIONS SHOULD NOW FIND THAT SUCH A BARGAINING UNIT IS NOT APPROPRIATE. WE HAVE PREVIOUSLY INDICATED THAT THE DETERMINATION OF A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING MUST TURN ON THE FACTS OF EACH CASE AND THE "ESSENCE OF APPROPRIATENESS IN THE CONTEXT OF LABOUR RELATIONS IS THAT THE EMPLOYEES BE ABLE TO CARRY ON A VIABLE AND MEANINGFUL COLLECTIVE BARGAINING RELATIONSHIP WITH THEIR EMPLOYER"; THE CANADIAN UNION OF PUBLIC EMPLOYEES V. THE BOARD OF EDUCATION FOR THE CITY OF TORONTO V. GROUP OF EMPLOYEES [1970] JULY OLRB MTHLY. REP. 430.

6. WHILE WE REQUIRE THAT A FACT DETERMINATION BE MADE IN EACH CASE WE ARE ALSO OF THE VIEW THAT PREVIOUS DECISIONS OF THIS BOARD IN SIMILAR SITUATIONS ARE TO BE GIVEN WEIGHT. A FINDING WITH RESPECT TO THE APPROPRIATENESS OF A BARGAINING UNIT IS SIGNIFICANT BECAUSE IT AFFECTS NOT ONLY THE ORGANIZING PRACTICES OF TRADE UNIONS BUT THE MANNER IN WHICH EMPLOYERS ORGANIZE THEIR AFFAIRS, AND ONCE THE BOARD HAS ARRIVED AT A DETERMINATION AS TO WHAT IS AN APPROPRIATE UNIT, IT SHOULD NOT HASTILY DEPART FROM ITS EARLIER DECISIONS. WHILE WE RECOGNIZE THAT WE ARE NOT BOUND BY THE PRINCIPLE OF STARE DECISIS, WE ARE ALSO OF THE OPINION THAT INCONSISTENT DECISIONS IN SIMILAR FACT SITUATIONS WILL CREATE CONFUSION. ACCORDINGLY, UNLESS IT CAN BE SHOWN THAT THE EARLIER DECISIONS OF THIS BOARD IN DETERMINING BARGAINING UNITS ARE MANIFESTLY IN ERROR, OR THAT THE FACTS ARE SUFFICIENTLY DISSIMILAR TO THOSE EARLIER DECISIONS, WE ARE LOATHE TO DEPART FROM THOSE PREVIOUS RULINGS.

7. THE REPRESENTATIONS INDICATE THAT IN THE CASES WHERE THE BOARD HAS PREVIOUSLY FOUND BARGAINING UNITS OF NON-PROFESSIONAL LIBRARY

EMPLOYEES TO BE APPROPRIATE THAT THE TRADE UNION REPRESENTING THOSE EMPLOYEES AND THE EMPLOYER HAVE BEEN ABLE TO ENTER INTO VIABLE AND MEANINGFUL BARGAINING RELATIONSHIPS. THERE IS NO EVIDENCE TO THE CONTRARY; AND WE THINK THERE IS SOME ONUS ON THE PARTY REQUIRING A DEPARTURE FROM OUR EARLIER VIEWS TO DEMONSTRATE THAT WE HAVE BEEN IN ERROR. THE EXPERIENCES OR THE KNOWN CONSEQUENCES OF AN EARLIER DECISION RESULTING IN AN UNWORKABLE COLLECTIVE BARGAINING RELATIONSHIP WOULD BE SIGNIFICANT TO US IF WE ARE TO DEPART FROM STANDARDS ALREADY FIXED. THE REPRESENTATIONS MADE WOULD NOT LEAD US TO THAT CONCLUSION; WE ARE ADVISED THAT THERE IS A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE UNIVERSITY OF TORONTO FOR THE NON-PROFESSIONAL EMPLOYEES IN THE LIBRARIES WHICH INDICATES A VIABLE AND MEANINGFUL COLLECTIVE BARGAINING RELATIONSHIP RESULTED FROM THIS BOARD'S DECISION WITH RESPECT TO THE BARGAINING UNIT IN THE LIBRARY AT THE UNIVERSITY OF TORONTO.

8. IN ADDITION, THE EVIDENCE DEMONSTRATES THAT THE BARGAINING UNIT APPLIES FOR IS A FUNCTIONAL AND INDEPENDENT ENTITY. WHILE ITS RELATIONSHIP WITH THE REMAINDER OF THE UNIVERSITY REQUIRES IT TO PARTICIPATE IN THE PROCESS OF THE WHOLE UNIVERSITY THAT DOES NOT MEAN THAT THE LIBRARY IS NOT AN ENTITY CAPABLE OF FUNCTIONING WITH SUFFICIENT INDEPENDENCE SO AS TO FORM AN APPROPRIATE BARGAINING UNIT. IT MAY VERY WELL BE THAT HAD THERE BEEN AN APPLICATION FOR ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES THAT THOSE NON-PROFESSIONAL EMPLOYEES MIGHT HAVE FALLEN INTO THE LARGE AND MORE COMPREHENSIVE UNIT; BUT, IN PUBLIC INSTITUTIONS GIVEN THE NATURE OF THEIR ORGANIZATION WHICH IS BOTH HORIZONTAL AND VERTICAL, ONE CANNOT SAY THAT THERE ARE CERTAIN FIXED LINES WHICH BARGAINING UNITS MUST FOLLOW. OFTEN CERTAIN GROUPS WHICH MAY FALL INTO ONE BARGAINING UNIT MAY ALSO FALL INTO ANOTHER BARGAINING UNIT, OR THEY MAY FORM AN APPROPRIATE BARGAINING UNIT IN THEMSELVES. THEREFORE, WE AGREE WITH THE REPRESENTATIONS OF COUNSEL FOR THE RESPONDENT TO THE EXTENT THAT IT WOULD ALSO BE APPROPRIATE TO JOIN THE NON-PROFESSIONAL LIBRARY PEOPLE IN A LARGER AND MORE COMPREHENSIVE BARGAINING UNIT, BUT THAT DOES NOT MEAN TO SAY THAT THE LIBRARY BY ITSELF IS INAPPROPRIATE AND THAT IS CONFIRMED BY THE EXPERIENCE FOLLOWING OUR EARLIER DECISIONS.

9. WE ARE CONCERNED WITH THE CONCEPT OF FRAGMENTATION IN THE UNIVERSITY. THAT THIS PARTICULAR SUB-DIVISION OF THE UNIVERSITY IS AN APPROPRIATE BARGAINING UNIT DOES NOT MEAN THAT ANY SUB-DIVISION OF A UNIVERSITY WILL FORM AN APPROPRIATE BARGAINING UNIT. AT QUEEN'S UNIVERSITY AT KINGSTON (BOARD FILE NO. 1161-71-R, MARCH 24, 1972) WE FOUND THAT THE PUBLIC RELATIONS DEPARTMENT WOULD NOT FORM AN APPROPRIATE BARGAINING UNIT. SIMILARLY, THE APPLICATION FOR A BARGAINING UNIT WHICH WOULD RESULT IN THE UNIVERSITY BEING FRAGMENTED INTO MULTIPLE BARGAINING UNITS AND THEREBY RENDER COLLECTIVE BARGAINING LESS THAN A MEANINGFUL EXPERIENCE WILL NOT BE TOLERATED BY THIS BOARD. TO THAT EXTENT THE SIZE AND NATURE OF THE LIBRARY AS A SELF-CONTAINED ADMINISTRATIVE UNIT IS SIGNIFICANT IN DETERMINING APPROPRIATENESS. OUR DECISION IS NOT TO BE CONSIDERED A PRECEDENT FOR SPLITTING THE UNIVERSITY INTO

BARGAINING UNITS ALONG HERE ADMINISTRATIVE LINES - WE REALIZE THAT SUCH A POLICY MIGHT BE UNWORKABLE.

10. IN THE RESULT THE BOARD FINDS THAT THE UNIT APPLIED FOR IS APPROPRIATE AND IS AS FOLLOWS:

ALL NON-PROFESSIONAL EMPLOYEES OF THE RESPONDENT AT THE UNIVERSITY OF WESTERN ONTARIO LIBRARIES (LONDON), SAVE AND EXCEPT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, PROFESSIONAL LIBRARIANS, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT WITH THE CANADIAN UNION OF OPERATING ENGINEERS, PERSON REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

11. FOR THE PURPOSE OF CLARITY THE BOARD NOTES THE FOLLOWING:

- (A) THAT UNIT HEADS ARE INCLUDED IN THE BARGAINING UNIT;
- (B) THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT SHARON ROBERTSON AND BRUCE GRAINGER EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT;
- (C) THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT DEBBIE BLACKWELL AND ZABEEDA MOHAMED DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

12. HAVING REGARD TO THE REPORT OF THE EXAMINER DATED JULY 13, 1972, THE BOARD FINDS THAT DEBBIE BLACKWELL AND ZABEEDA MOHAMED ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

13. THE REGISTRAR IS DIRECTED TO OPEN THE BALLOT BOXES WHICH HAVE BEEN SEALED AND TO COUNT THE BALLOTS.

2697-72-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) v. LEVI STRAUSS OF CANADA, INC. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS A. MAIN AND W.H. WIGHTMAN.

APPEARANCES AT THE HEARING: J. SACK, S. FOX AND H. LAUTMAN FOR THE APPLICANT; I. H. MCGOWAN, E. SMITH AND B. BARKWAY FOR THE RESPONDENT; G. A. SPINNER, B. CHARLEBOIS AND M. LEMHUX FOR THE OBJECTORS.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER A. MAIN: DECEMBER 22, 1972.

. . .

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL ENGAGED IN SHIPPING, RECEIVING AND STOCKING, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THIS MATTER TOTALS 16, 15 OF WHOM ARE CLAIMED IN MEMBERSHIP BY THE APPLICANT. THERE WAS ALSO FILED A HANDWRITTEN PETITION, SIGNED BY 12 EMPLOYEES PURPORTING TO BE EMPLOYEES OF THE RESPONDENT, 9 OF WHOM HAD INITIALLY SIGNED MEMBERSHIP CARDS IN THE APPLICANT. IF THE BOARD WERE TO GIVE WEIGHT TO THIS PETITION IT WOULD HAVE THE EFFECT OF REDUCING THE APPLICANT'S UNQUALIFIED EVIDENCE OF MEMBERSHIP FROM A POSITION OF OUTRIGHT CERTIFICATION TO LESS THAN THE SIXTY-FIVE PER CENT REQUIREMENT. THE BOARD ACCORDINGLY FOUND THE PETITION TO BE RELEVANT AND AT THE INITIAL HEARING OF THIS MATTER ON OCTOBER 30, 1972, PROCEEDED TO INQUIRE INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENT. UPON COMPLETION OF THIS INQUIRY, THE APPLICANT ADDUCED EVIDENCE IN SUPPORT OF ITS CHARGES OF MANAGEMENT INVOLVEMENT IN A PETITION AS PARTICULARIZED IN ITS LETTER DATED OCTOBER 25, 1972, AS AMENDED AT THE HEARING. UPON COMPLETION OF THE APPLICANT'S EVIDENCE IN THIS REGARD, AT THE CONTINUATION OF HEARING OF THIS MATTER IN CORNWALL ON NOVEMBER 30, 1972, THE RESPONDENT ADDUCED EVIDENCE IN REBUTTAL. THE PETITIONERS CHOSE TO ADDUCE NO EVIDENCE IN THIS REGARD.

5. THE EVIDENCE DISCLOSES THAT ON TUESDAY, OCTOBER 17, 1972, THE RESPONDENT POSTED UPON ITS BULLETIN BOARD THE FORM 5 NOTICE TO EMPLOYEES OF THIS APPLICATION. THE PETITIONER, GERALD SPINNER, A "LEAD HAND" EMPLOYED IN THE RESPONDENT'S SHIPPING DEPARTMENT WAS OBSERVED ON OCTOBER 18, 1972, BY TED CREWS, A FELLOW EMPLOYEE, IN FRONT OF THE BULLETIN BOARD POINTING TO THE SAID NOTICE WHILE CONVERSING WITH CERTAIN MANAGEMENT PERSONNEL WHICH INCLUDED MISS BARKWAY, THE PERSONNEL MANAGER AND EUGENE SMITH, CUSTOMER SERVICE MANAGER, IN CHARGE OF THE RESPONDENT'S ADMINISTRATIVE FUNCTIONS AND PURCHASING. THE EVIDENCE IS CONFLICTING AS TO WHETHER A MR. REICHERT, THE RESPON-

DENT'S INTERNATIONAL PERSONNEL REPRESENTATIVE WAS ALSO PRESENT AT THIS TIME IN THAT PARTICULAR AREA OF THE PREMISES. IN ANY EVENT, WE FIND THAT THE TIMING OF HIS VISIT TO THE WAREHOUSE WAS PURELY COINCIDENTAL TO THE POSTING OF THE NOTICE. A PREVIOUS NOTICE PLACED ON THE BULLETIN BOARD ON OCTOBER 11, 1972, ADVISING THE EMPLOYEES OF REICHART'S EXPECTED VISIT FOR THE PURPOSE OF DISCUSSING A COMPENSATION PACKAGE, LENDS FURTHER CREDENCE TO OUR FINDING IN THIS REGARD. BE THAT AS IT MAY, SPINNER WAS OBSERVED CONVERSING WITH MISS BARKWAY AND SMITH AT THIS TIME FOR A PERIOD OF FIFTEEN MINUTES. HAVING CAREFULLY REVIEWED THE EVIDENCE IN THIS REGARD, WE ARE SATISFIED THAT THERE WERE NO IMPROPRIETIES AS REGARDS THE EXPLANATIONS PROVIDED BY THESE LATTER INDIVIDUALS IN RESPONSE TO SPINNER'S GENERAL QUERIES CONCERNING THE NOTICE.

6. THAT AFTERNOON, NAMELY OCTOBER 18, 1972, SPINNER ADDRESSED THE EMPLOYEES AT THE LOADING DOCK REQUESTING THAT THEY OPPOSE THE APPLICANT FOR THE TIME BEING, AND TO GIVE THE COMPANY AN OPPORTUNITY TO MAKE THEM AN OFFER. HE REPEATED THIS REQUEST AT THE MEETING OF EMPLOYEES CALLED BY WILFRED GELINAS, THE APPLICANT'S ORGANIZER, HELD LATER THAT DAY AT A NEARBY HOTEL. HE RECEIVED SOME BACKING IN THIS REGARD, FROM BERNARD CHARLEBOIS, A "LEAD HAND" IN CHARGE OF THE RESPONDENT'S PACKING OPERATIONS. THE EVIDENCE IN THIS REGARD DISCLOSES THAT BOTH SPINNER AND CHARLEBOIS WERE PAID A HIGHER RATE THAN THE REMAINDER OF THE WAREHOUSE EMPLOYEES. ALTHOUGH THEY WERE UNDER THE SUPERVISION OF JIM LATIMER, THE WAREHOUSE SUPERVISOR, THE NATURE OF THEIR DUTIES NEVERTHELESS BROUGHT THEM IN CONSTANT CONTACT WITH MANAGEMENT PERSONNEL. WE ARE SATISFIED ON THE EVIDENCE THAT THEIR ATTENDANCES AT MISS BARKWAY'S OFFICE DURING THE RELEVANT TIMES WERE OCCASIONED PRIMARILY FOR BUSINESS AND PERSONAL REASONS. WE ARE ALSO SATISFIED HOWEVER, THAT AT LEAST, IN THE EYES OF SOME OF THE WAREHOUSEMEN, BOTH SPINNER AND CHARLEBOIS WERE "SUPERVISORS" CAPABLE OF AFFECTING THEIR EMPLOYMENT RELATIONSHIP.

7. DURING THE NEXT MORNING, VIZ. OCTOBER 19, 1972, SPINNER AFTER APPROACHING THE EMPLOYEES AT WORK, COMPLETED, DURING THE LUNCH PERIOD THE HEADING ON A DOCUMENT EXPRESSING OPPOSITION TO THE APPLICANT AND HEREINAFTER REFERRED TO AS PETITION #1. HE THEN PROCEEDED TO OBTAIN THE SIGNATURES OF THE EMPLOYEES ON THIS DOCUMENT AT THIS TIME. GELINAS' EVIDENCE IS THAT UPON HEARING "RUMOURS" OF SPINNER'S ACTIVITIES IN THIS REGARD, HE IN THE COMPANY OF GEORGE HARROP, A REPRESENTATIVE FROM ANOTHER UNION, VISITED SPINNER AT HIS HOME THAT EVENING. THERE IS A CONFLICT IN THE EVIDENCE AS TO THE EXTENT OF THE CONVERSATION WHICH TRANSPIRED AT THIS TIME. HOWEVER, THE UNCONTRADICTED EVIDENCE OF GELINAS IS TO THE EFFECT THAT AS THEY WERE ABOUT TO LEAVE, SPINNER STATED THAT "I AM NOT ALONE IN THIS CASE. I DEALT WITH A MAN IN THE OFFICE AND HE IS AS DEEP IN THE CASE AS I AM." IT WOULD APPEAR THAT THESE STATEMENTS WERE PROVOKED BY GELINAS ACCUSING SPINNER OF PARTICIPATING IN AN UNFAIR LABOUR PRACTICE AS A RESULT OF HIS ACTIVITIES THAT MORNING, AND SUGGESTING THAT HE SEE A LAWYER. WITHOUT EXAMINING THE MERITS OF A UNION REPRESENTATIVE EMBARKING UPON SUCH A COURSE OF ACTION AS HE DID IN THIS CASE, WE ARE NEVERTHELESS SATISFIED THAT THE VISIT UPSET SPINNER TO SUCH AN EXTENT THAT HE ARRANGED A SPECIAL MEET-

ING WITH MANAGEMENT (WHICH INCLUDED MESSRS. REICHERT, SMITH, LATIMER AND MISS BARKWAY) THE VERY NEXT MORNING OF OCTOBER 20, 1972. ASIDE FROM ADVISING SPINNER TO SEEK OUT THE AID OF A LAWYER, WE ARE SATISFIED ON THE EVIDENCE, THAT THE RESPONDENT TOOK NO FURTHER STEPS TO ASSIST HIM IN HIS FLIGHT.

8. THE EVIDENCE FURTHER DISCLOSES THAT AFTER SPINNER OBTAINED THE SIGNATURES ON PETITION #1 DURING THE LUNCH PERIOD ON OCTOBER 19, 1972, SPINNER AND CHARLEBOIS ATTENDED WITH THE DOCUMENT THAT AFTERNOON AT THE RESPONDENT'S PHOTOSTATING MACHINE LOCATED JUST OUTSIDE MR. MANNING'S OFFICE (THE WAREHOUSE MANAGER) NEXT TO LATIMER'S DESK. WHILE THEY WERE IN THE PROCESS OF DUPLICATING THE DOCUMENT, THE EVIDENCE IS UNCONTRADICTED THAT LATIMER CAME OVER AND ASSISTED IN FIXING THE MACHINE WHEN IT BECAME JAMMED. ALTHOUGH IT WOULD APPEAR THAT LATIMER WAS IN ATTENDANCE JUST OUTSIDE THE HEARING ROOM AT THE HEARING OF THIS MATTER ON NOVEMBER 30, 1972, HE WAS NOT CALLED UPON BY EITHER THE RESPONDENT OR THE PETITIONERS TO TESTIFY IN THESE PROCEEDINGS IN ANSWER TO THE APPLICANT'S CHARGES IN THIS REGARD.

9. FURTHER UNCONTRADICTED EVIDENCE AS ELICITED THROUGH THE TESTIMONY OF FRANCES SECORD, ANOTHER WAREHOUSE EMPLOYEE OF THE RESPONDENT, IS TO THE EFFECT THAT DURING THE LUNCH PERIOD ON OCTOBER 20, 1972, SPINNER INFORMED HIM THAT HE (SPINNER) WAS ABOUT TO MAIL PETITION #1 TO THE BOARD AND THAT THE DUPLICATE COPY HE HAD MADE WAS "LOCKED UP IN THE SAFE." HAVING REGARD TO THE EVIDENCE, WE ARE SATISFIED THAT THIS STATEMENT WAS MADE WITH REFERENCE TO THE RESPONDENT'S SAFE LOCATED UPON ITS PREMISES. WE ARE FURTHER SATISFIED THAT ALTHOUGH ONLY EUGENE SMITH AND MRS. MILLER, THE BOOKKEEPING SUPERVISOR KNEW THE COMBINATION, THE SAFE WAS LEFT UPON THROUGHOUT THE WORKING DAY AND WAS QUITE OFTEN UNATTENDED. IN THIS REGARD, WE FIND THAT THE SAFE WAS EASILY ACCESSABLE TO ALL EMPLOYEES AND THERE WAS NO DEFINED COMPANY POLICY RESTRICTING ANYONE FROM DEPOSITING THEIR PERSONAL EFFECTS THEREIN. THE ONLY EVIDENCE ELICITED FROM SPINNER IN THIS REGARD, IS THAT HE DESTROYED THE DUPLICATE OF PETITION #1 THE FOLLOWING MONDAY MORNING OF OCTOBER 23, 1972, WHILE AT WORK, BY RUNNING IT THROUGH THE RESPONDENT'S "SHREDDER". HE DESTROYED THE ORIGINAL LATER THAT EVENING AT HOME.

10. THE REASONS, ACCORDING TO SPINNER, LEADING TO HIS DECISION TO DESTROY PETITION #1, WOULD APPEAR TO HAVE BEEN REACHED AFTER CONSULTING WITH A LAWYER ON FRIDAY, OCTOBER 20, 1972. IN THIS REGARD, SPINNER TESTIFIED THAT HE FELT PETITION #1 WAS NOT VALID SINCE THE HEADING REFERRED TO THE RESPONDENT'S NAME IN TERMS ONLY OF ITS INITIALS "L.S.I." AND THAT THE DOCUMENT DID NOT SET OUT THE CORRECT NUMBER OF EMPLOYEES IN THE UNIT. ACCORDINGLY, HE AMENDED THE HEADING ON A SECOND DOCUMENT (HEREINAFTER REFERRED TO AS PETITION #2) WHICH HE HAD PREPARED AT HOME ON OCTOBER 22, 1972. IN PASSING, WE NOTE THAT HIS EFFORTS IN THIS REGARD WERE NOT STYMIED BY A SECOND VISIT PAID TO HIM AT HIS HOME THE PREVIOUS SATURDAY BY GELINAS.

11. SPINNER THEN TOOK PETITION #2 WITH HIM TO WORK THE NEXT MORNING OF OCTOBER 23, 1972 WHERE AS PREVIOUSLY ARRANGED, HE DEPOSITED IT IN CHARLEBOIS' TRUCK. CHARLEBOIS, IN TURN, DURING THE LUNCH BREAK PROCEEDED TO OBTAIN THE SIGNATURES OF THE EMPLOYEES IN THIS VEHICLE WHICH WAS PARKED IN FRONT OF THE RESPONDENT'S PREMISES. SPINNER, WHO HAD APPARENTLY JUST RETURNED FROM HIS LAWYER'S OFFICE, THEN ALSO SIGNED THE DOCUMENT HIMSELF. AS WAS THE CASE WITH PETITION #1, HE ALSO MADE A PHOTOSTATIC COPY OF PETITION #2.

12. HAD THE BOARD RESTRICTED THESE PROCEEDINGS TO THE NORMAL IN-QUIRY PROCEDURES WHICH IT CONDUCTS ON ITS OWN BEHALF IN RELATION TO PETITIONS, AND AS ELICITED AT THE INITIAL HEARING OF THIS MATTER ON OCTOBER 30, 1972, THERE IS NO QUESTION IN OUR MINDS THAT THE EVIDENCE RELATING TO THE ORIGATION, PREPARATION AND CIRCULATION OF PETITION #2, STANDING ALONE, WOULD HAVE SATISFIED US THAT THE DOCUMENT REPRESENTED A VOLUNTARY EXPRESSION OF THE DESIRES OF THE SIGNATORIES THERETO. HOWEVER, THE BOARD HAS ON NUMEROUS OCCASIONS FAILED TO RECOGNIZE AN OTHERWISE VALID PETITION AND HAS TREATED THE DOCUMENT AS TAINTED OR CONTAMINATED IN CIRCUMSTANCES WHERE, TO USE THE WORD SUGGESTED BY THE COUNSEL FOR THE APPLICANT, THE DOCUMENT IN QUESTION HAS BEEN "INFECTED" BY IMPROPER CIRCUMSTANCES SURROUNDING THE TAKING OF A PREVIOUSLY EXISTING PETITION. THERE CAN BE NO QUESTION THAT THE ONUS OF PROOF IN THIS REGARD, IS UPON THE APPLICANT. HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE IN THIS REGARD, WE ARE SATISFIED THAT THE APPLICANT HAS DISCHARGED SUCH ONUS.

13. ACCORDINGLY, HAVING REVIEWED ALL THE EVIDENCE IN THIS MATTER WHICH WAS EXTENSIVE AND IN MANY RESPECTS IN DIRECT CONFLICT AS BETWEEN THE WITNESSES CALLED ON BEHALF OF THE RESPONDENT AND THE PETITIONERS, AS COMPARED WITH THE TESTIMONY ELICITED FROM THE WITNESSES CALLED ON BEHALF OF THE APPLICANT, AND TAKING INTO ACCOUNT THE REPRESENTATIONS OF THE PARTIES THERETO, THE BOARD IN THESE CIRCUMSTANCES IS NOT PREPARED TO ATTACH ANY WEIGHT TO PETITION #2 FILED HEREIN AS REPRESENTING THE TRUE DESIRES OF THE SIGNATORIES THERETO.

14. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT, THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 24, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

15. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER W. H. WIGHTMAN: DECEMBER 22, 1972.

I DISSENT.

AS INDICATED IN PARAGRAPH 12 OF THE MAJORITY DECISION PETITION #2, WOULD HAVE BEEN ACCEPTABLE TO THE BOARD BUT THAT IT WAS "TAINTED" BY PETITION #1. THE "TAINTING" OF PETITION #1 APPEARS TO REST ON ACCEPTANCE OF THE FOLLOWING:

- A) THAT THE ORIGINATORS OF THE PETITIONS, SPINNER AND CHARLEBOIS WERE "SUPERVISORS" IN THE EYES OF SOME OF THE WAREHOUSEMEN; (PARAGRAPH 6)
- B) THAT SPINNER AND CHARLEBOIS UTILIZED THE RESPONDENT'S PHOTOSTATING MACHINE TO REPRODUCE COPIES OF PETITION #1 AND THAT LATIMER, A MEMBER OF SUPERVISION, ASSISTED IN FIXING THE MACHINE WHEN IT BECAME JAMMED WHILST SPINNER AND CHARLEBOIS WERE USING IT, (PARAGRAPH 8) AND,
- C) THAT SPINNER LEFT THE DUPLICATE OF PETITION #1 IN THE RESPONDENT'S WALK-IN SAFE FOR A PERIOD OF TIME AND SUBSEQUENTLY DESTROYED THE DUPLICATE UTILIZING THE RESPONDENT'S "SHREDDER". (PARAGRAPH 9)

MOREOVER, TO AGREE THAT THE PETITION HAD BEEN TAINTED, ONE MUST ALSO BE ABLE TO PERCEIVE IN THE FOREGOING EVIDENCE OF AN IMPROPER INVOLVEMENT ON THE PART OF THE RESPONDENT.

IT WAS CLEAR FROM THE EVIDENCE OF THE OBJECTORS AND MEMBERS OF SUPERVISION OF THE RESPONDENT THAT NEITHER SPINNER NOR CHARLEBOIS WERE, OR ARE, "SUPERVISORS". I FIND IT DIFFICULT TO ACCEPT THAT 16 PEOPLE WORKING IN A RELATIVELY CONFINED AREA WOULD NOT HAVE FULL KNOWLEDGE AS TO WHICH OF THEIR MEMBERS, IF ANY, WERE "SUPERVISORS".

THAT THE RESPONDENT SHOULD SEE FIT TO TOLERATE EMPLOYEES MAKING "REASONABLE" PERSONAL USE OF THE PHOTOSTATING MACHINE OR THAT HE SHOULD PERMIT EMPLOYEES TO LEAVE PERSONAL EFFECTS IN THE COMPANY SAFE, AS WAS TESTIFIED BY E. SMITH THE SENIOR MEMBER OF MANAGEMENT, IS NOT, TO MY MIND, A REMARKABLE COMPANY POLICY GIVEN THE SMALL NUMBERS OF PEOPLE INVOLVED. MOREOVER, IS WAS CLEAR THAT NOT ONLY DID SMITH NOT CARE WHETHER THE SAFE, THE DUPLICATOR AND THE SHREDDER HAS BEEN USED BY SPINNER FOR PERSONAL REASONS, IT IS EQUALLY CLEAR THAT INsofar AS THE SAFE AND THE SHREDDER WERE CONCERNED NEITHER HE, NOR ANY OTHER MEMBER OF SUPERVISION KNEW WHETHER SUCH WAS THE CASE.

WHILE I CAN ACCEPT THAT LATIMER CAME TO KNOW OF THE PETITION NO LATER THAN THE TIME HE ASSISTED SPINNER AND CHARLEBOIS IN REPAIRING THE DUPLICATING MACHINE, IN LIGHT OF COMPANY POLICY REGARDING ITS USE, I WOULD ATTACH SIGNIFICANCE TO THE EVENT ONLY IF THERE HAD BEEN COLLATERAL EVIDENCE OF THE RESPONDENT HAVING MADE AN ATTEMPT TO INFLUENCE

THE ATTITUDE OF EMPLOYEES WITH RESPECT TO THE APPLICANT OR THE PETITION. ALL OF THE DIRECT EVIDENCE, AND IT WAS VERY STRONG, POINTED TOWARDS A "HANDS OFF" POLICY ON THE PART OF THE RESPONDENT.

WERE I LOOKING FOR SOMETHING SINISTER IN THESE EVENTS I SHOULD HAVE BEEN MORE INCLINED TO BELIEVE THAT THE VISITS OF MESSRS. GELINAS AND HARROP TO THE HOME OF SPINNER WERE FOR PURPOSES OTHER THAN THE GIVING OF FRIENDLY ADVICE.

LOOKING AT THE CASE FROM MY END OF THE TELESCOPE, I WOULD HAVE ACCEPTED THE PETITION AT ITS FACE VALUE AND, HAVING REGARD FOR THE TOTALITY OF MEMBERSHIP EVIDENCE, ORDERED A MEMBERSHIP VOTE.

CASE LISTINGS DECEMBER 1972

	PAGE
1. CERTIFICATION	
(A) BARGAINING AGENTS CERTIFIED	306
(B) APPLICATIONS DISMISSED	325
(C) APPLICATIONS WITHDRAWN	328
2. APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	329
3. APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL	330
4. APPLICATIONS FOR CONSENT TO PROSECUTE	330
5. COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)	331
6. APPLICATIONS UNDER SECTION 55 (FORMERLY S. 47A)	333
7. JURISDICTIONAL DISPUTE	333
8. APPLICATION FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))	333
9. APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	333

2646-72-R: RETAIL CLERKS UNION, LOCAL 206, CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. LOBLAW GROCETERIAS CO. LIMITED (RESPONDENT). (DISMISSED).

JURISDICTIONAL DISPUTE

1943-72-JD: INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA, LOCAL 482 (COMPLAINANT) V. THE KINGSTON TYPOGRAPHICAL UNION No. 204, I.T.U., AND THE KINGSTON-WHIG-STANDARD COMPANY LIMITED (RESPONDENTS). (GRANTED).

[1972] 2 OLRB M.R. - PAGE 959.

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))

DISPOSED OF DURING NOVEMBER

1336-71-M: THE CANADIAN NATIONAL INSTITUTE FOR THE BLIND (APPLICANT) V. THE ONTARIO UNION OF BLIND AND SIGHTED MERCHANTS (RESPONDENTS). (WITHDRAWN).

2341-72-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) V. DOUGLAS AIRCRAFT COMPANY OF CANADA LTD. (RESPONDENT). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 942.

2605-72-M: TEAMSTERS LOCAL UNION 989 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. HOFFMAN CONCRETE PRODUCTS (RESPONDENT). (DISMISSED).

2778-72-M: UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. DOMINION GLASS COMPANY LIMITED (RESPONDENT). (DISMISSED).

REFERENCE TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)

2606-72-M: STEAD & LINDSTROM LIMITED (EMPLOYER) V. LUMBER & SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (TRADE UNION). (DISMISSED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

2444-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. G. S. WARK LIMITED (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - LOCK-OUT

2129-72-U: MANSFIELD MATHIAS (APPLICANT) V. FORD MOTOR COMPANY OF CANADA, LIMITED (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

(FORMERLY S. 65)

2293-72-U: WILLIAM STOUTLEY (COMPLAINANT) V. BARTENDERS & WAITERS UNION LOCAL 280 AND EL MOCAMBO TAVERNE (RESPONDENTS). (REQUEST DENIED).

[1972] 2 OLRB M.R. - PAGE 938.

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING DECEMBER 1972

BARGAINING AGENTS CERTIFIED DURING DECEMBERNO VOTE CONDUCTED

24-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON, IN ONTARIO, AS OWNER AND OPERATOR OF ST. JOSEPH'S HOSPITAL, CHATHAM, ONTARIO (RESPONDENT).

UNIT: "ALL REGISTERED AND NON-REGISTERED MEDICAL LABORATORY TECHNOLOGISTS AND TECHNICIANS EMPLOYED BY THE RESPONDENT IN ITS HOSPITAL AT CHATHAM, SAVE AND EXCEPT CHIEF TECHNOLOGISTS, PERSONS ABOVE THE RANK OF CHIEF TECHNOLOGIST, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS REGULARLY EMPLOYED DURING THE SCHOOL VACATION PERIODS AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND LOCAL 210 OF THE BUILDING SERVICE EMPLOYEES UNION AND LOCAL 107 OF THE CANADIAN UNION OF OPERATING ENGINEERS, RESPECTIVELY." (13 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1701-71-R: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA (APPLICANT) V. REID'S HOLDINGS (BELLEVILLE) LIMITED, UNION CARBIDE CANADA LIMITED, NAPANEE INDUSTRIES (1962) LTD., MEAD JOHNSON CANADA, A DIVISION OF BRISTOL MYERS CANADA LTD. (RESPONDENTS).

UNIT: "ALL DRIVERS EMPLOYED BY THE RESPONDENT IN THE PROVINCE OF ONTARIO WORKING UNDER SERVICE CONTRACTS WITH UNION CARBIDE CANADA LIMITED, SAVE AND EXCEPT DISPATCHERS, PERSONS ABOVE THE RANK OF DISPATCHER AND PERSONS

EMPLOYED EITHER IN OR OUT OF THE BARGAINING UNIT FOR A TOTAL OF NOT MORE THAN 24 HOURS PER WEEK." (32 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2162-72-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 183 AFFILIATED WITH S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. ROBERT CRUIKSHANK CLEANING CONTRACTORS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (71 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES THAT THE FOUR EMPLOYEES ARE "STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD", WE THEREFORE FIND THAT THEY ARE INCLUDED IN THE BARGAINING UNIT AS DEFINED ABOVE.).

2163-72-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 183 AFFILIATED WITH S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. ROBERT CRUIKSHANK CLEANING CONTRACTORS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (71 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2469-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. PEMBROKE GENERAL HOSPITAL (RESPONDENT).

UNIT #1: "ALL LAY OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT PEMBROKE, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, ONE SECRETARY EACH TO THE ADMINISTRATOR AND TO THE DIRECTOR OF NURSING SERVICES, PAYROLL CLERK, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (36 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT WARD CLERKS ARE NOT INCLUDED IN BARGAINING UNIT #1.). (FOR PURPOSES OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS EMPLOYED AT THE LORRAINE SCHOOL OF NURSING AND THE ADDICTION FOUNDATION ARE NOT INCLUDED IN BARGAINING UNIT #1.).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

2492-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE COUNTY OF GREY (RESPONDENT).

UNIT: "ALL HIGHWAYS DEPARTMENT EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF GREY, SAVE AND EXCEPT PROJECT SUPERVISORS, AREA PATROLMEN, SHOP FOREMEN, GENERAL FOREMAN AND PERSONS ABOVE THE RANK OF PROJECT SUPERVISOR, AREA PATROLMAN, SHOP FOREMAN AND GENERAL FOREMAN." (70 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2493-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE COUNTY OF GREY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF GREY, SAVE AND EXCEPT DEPUTY CLERK, PERSONS ABOVE THE RANK OF DEPUTY CLERK, PERSONS EMPLOYED AT THE MUSEUM AND AT THE GREY-OWEN LODGE AND PERSONS EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (40 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2517-72-R: CSAO NATIONAL (INC.) (APPLICANT) V. OTTAWA GENERAL HOSPITAL (RESPONDENT) V. LE SYNDICAT DES SERVICES HOSPITALIERS DU DISTRICT D'OTTAWA (INTERVENER).

UNIT #1: "ALL X-RAY TECHNICIANS EMPLOYED BY THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT CHARGE TECHNICIAN, PERSONS ABOVE THE RANK OF CHARGE TECHNICIAN, STUDENTS, NUCLEAR MEDICINE TECHNICIANS, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENT EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND LE SYNDICAT DES SERVICES HOSPITALIERS DU DISTRICT D'OTTAWA AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (HEREINAFTER REFERRED TO AS BARGAINING UNIT #1)." (16 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

2697-72-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. LEVI STRAUSS OF CANADA, INC. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL ENGAGED IN SHIPPING, RECEIVING AND STOCKING, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (16 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

[1972] 2 OLRB M.R. - PAGE 1041.

2738-72-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL CIO CLC (APPLICANT) V. UNITED TIRE AND RUBBER MFG. (TORONTO) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN COBOURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES AND OFFICE STAFF, QUALITY CONTROL INSPECTORS AND LABORATORY TECHNICIANS." (144 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2762-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) V. S.K.D. MANUFACTURING CO. LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT AMHERSTBURG, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SALES REPRESENTATIVES, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT THE RESPONDENT." (16 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2799-72-R: TEAMSTERS LOCAL UNION No. 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. BAY-KING MOTORS (1968) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN HAMILTON, SAVE AND EXCEPT SERVICE ADVISORS, PERSONS ABOVE THE RANK OF SERVICE ADVISOR, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (31 EMPLOYEES IN THE UNIT).

2807-72-R: GRAPHIC ARTS INTERNATIONAL UNION OTTAWA LOCAL 224 (APPLICANT) V. BOOKPRINT-RAPIDE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (29 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2820-72-R: SERVICE EMPLOYEES UNION, LOCAL 210, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. CENTRAL PARK LODGES OF CANADA (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS OCCUPATIONAL THERAPISTS, AND OFFICE AND CLERICAL STAFF." (10 EMPLOYEES IN THE UNIT).

2821-72-R: SERVICE EMPLOYEES UNION, LOCAL 210, A.F.L.-C.I.O.-C.L.C.- (APPLICANT) V. CENTRAL PARK LODGES OF CANADA (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT WINDSOR REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (4 EMPLOYEES IN THE UNIT).

2828-72-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. CANDY MOUNTAIN RESORTS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT ON CONSTRUCTION PROJECTS IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2832-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. NICK DELLELCE LIMITED, T. ENRICO DELLELCE JR. LIMITED AND PETER MICHAEL DELLELCE LIMITED, CARRYING ON BUSINESS IN PARTNERSHIP UNDER THE NAME AND STYLE OF DELLELCE CONSTRUCTION AND EQUIPMENT (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER." (75 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THIS AGREEMENT AND THE AGREEMENT OF THE PARTIES).

2833-72-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO:CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN THE TOWNSHIP OF PICKERING, SAVE AND EXCEPT ASSISTANT STORE MANAGERS AND PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, BAKERY MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (122 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2837-72-R: TEAMSTERS LOCAL UNION No. 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS CASH AND CARRY OPERATION IN GUELPH, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

2849-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) V. MOTOR EMPLOYEES (WINDSOR) CREDIT UNION LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2850-72-R: FEDERATION OF CHILDREN'S AID STAFFS (APPLICANT) V. THE FAMILY AND CHILDREN'S SERVICES OF HASTINGS COUNTY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF HASTINGS, SAVE AND EXCEPT SOCIAL WORKERS, CO-ORDINATORS, CHILD CARE STAFF, SECRETARY TO THE DIRECTOR, THE DIRECTOR, BOOKKEEPER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (35 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2852-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. DOUGLAS MEMORIAL HOSPITAL (RESPONDENT) V. ONTARIO BRANCH, CANADIAN PHYSIOTHERAPY ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FORT ERIE, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, OFFICE AND CLERICAL STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 722." (66 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

2872-72-R: THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 736 (APPLICANT) V. K. H. PRESTON CONSTRUCTION (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (INTERVENER #1) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 506 (INTERVENER #2) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL (INTERVENER #3).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

2880-72-R: LUMBER AND SAWMILL WORKERS UNION LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. LORENZO NADEAU (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT MISSANABIE, TOWNSHIP 46, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SCALERS, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL

VACATION PERIOD." (38 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

[1972] 2 OLRB M.R. - PAGE 1037.

2887-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION #493 (APPLICANT) V. REINHARDT MASONRY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS OF THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

2888-72-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 (APPLICANT) V. CUYLER CONTRACTING CO. LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2889-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF WATERS (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE CORPORATION OF THE TOWNSHIP OF WATERS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2890-72-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. CANADIAN FOOD PRODUCTS SALES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

2892-72-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 339 (APPLICANT) V. DONOVAN CONSTRUCTION COMPANY OF CANADA LTD. (RESPONDENT).

UNIT: "ALL SUB-FOREMEN LINEMEN, LINEMEN, APPRENTICE LINEMEN AND GROUND-MEN IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT PERSONS ABOVE THE RANK OF SUB-FOREMAN." (17 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2893-72-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. CANADA PACKERS LIMITED FOOD SERVICE DIVISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMALEA, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE AND SALES STAFF." (71 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY AND HAVING REGARD TO THE BARGAINING HISTORY OF THE RESPONDENT THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT SCIENTIFIC WORKERS ARE NOT INCLUDED IN THE BARGAINING UNIT.).

2894-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. CADILLAC DEVELOPMENT CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2897-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. AMERI-CANA MOTEL LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT ON CONSTRUCTION PROJECTS IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FOREGOING AND IN THE CIRCUMSTANCES OF THIS APPLICATION).

[1972] 2 OLRB M.R. - PAGE 997.

2898-72-R: THE BRICKLAYER'S, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL #10 (APPLICANT) V. BROOKSIDE CONSTRUCTION (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2899-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. J. B. CARROLL ELECTRIC LTD. (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2901-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. I. C. SUATAC CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (18 EMPLOYEES IN THE UNIT).

2906-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. LOCH LOMOND SKI AREA (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2908-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. PERWIN CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2911-72-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. ALLARD CONSTRUCTION OF ONTARIO LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS, CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2912-72-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. GORDON'S SAW SHOP (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THUNDER BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

2913-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF MOUNTJOY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF MOUNTJOY, SAVE AND EXCEPT SUPERINTENDENT OF PUBLIC WORKS, PERSONS ABOVE THE RANK OF SUPERINTENDENT OF PUBLIC WORKS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT (1) THE CO-ORDINATOR OF THE URBAN RENEWAL PROJECT EXERCISES MANAGERIAL FUNCTIONS AND IS EMPLOYED

IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS; AND (2) THE ARENA MANAGER IS PART OF OFFICE STAFF; AND THAT THESE PERSONS ARE ACCORDINGLY EXCLUDED FROM THE BARGAINING UNIT.).

2915-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. NORTHERN CAN COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (31 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2917-72-R: THE STAFF ASSOCIATION HALDIMAND-NORFOLK HEALTH UNIT (APPLICANT) V. HALDIMAND-NORFOLK BOARD OF HEALTH (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT CHIEF PUBLIC HEALTH INSPECTOR, OFFICER MANAGER AND DENTAL DIRECTOR AND PERSONS ABOVE THE RANK OF CHIEF PUBLIC HEALTH INSPECTOR, OFFICE MANAGER AND DENTAL DIRECTOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE NURSES ASSOCIATION HALDIMAND-NORFOLK HEALTH UNIT." (15 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2926-72-R: BRICKLAYERS, MASONS INDEPENDENT UNION OF CANADA LOCAL 1 (APPLICANT) V. GUGLIELMI BROTHERS BRICKLAYING (RESPONDENT).

UNIT: ALL BRICKLAYERS, BRICKLAYERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES.).

2928-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) V. F. A. TUCKER (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

2929-72-R: BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION NO. 7 (APPLICANT) V. DOUGLAS MACDONALD COMPANY LTD. (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL

MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

2937-72-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. CANADIAN PITTSBURGH INDUSTRIES LIMITED, TORONTO PAINT SALES, SERVICE AND DISTRIBUTION CENTRE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 299 CARLINGVIEW DRIVE IN THE MUNICIPALITY OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2942-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493 (APPLICANT) V. LAKESHORE CONTRACTING & EQUIPMENT RENTALS (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2943-72-R: CANADIAN TRANSPORTATION WORKERS UNION NO. 188 (APPLICANT) V. SUPERIOR SANITATION SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT ITS TERMINAL AT SARNIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS AND OFFICE STAFF." (10 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2944-72-R: CANADIAN TRANSPORTATION WORKERS UNION NO. 188 (APPLICANT) V. SUPERIOR SANITATION SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT ITS TERMINAL AT BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2945-72-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 124 OTTAWA (APPLICANT) V. SOUND-PROOF ACOUSTIQUE TILE ENRG. (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

2952-72-R: LONDON AND DISTRICT BUILDING SERVICE WORKER'S UNION, LOCAL 220, S.E.I.U. - A.F. of L. - C.I.O. - C.L.C. (APPLICANT) V. CORPORATION OF COUNTY OF ELGIN (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE CORPORATION OF COUNTY OF ELGIN AT ITS ELGIN MANOR, AT ST. THOMAS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, REGISTERED NURSES, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (81 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2954-72-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. SUNSHINE UNIFORM AND SUPPLY CO. LIMITED (RESPONDENT).

UNIT: "ALL DRIVER SALESMEN IN THE EMPLOY OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2955-72-R: INTERNATIONAL UNION UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1962 (APPLICANT) V. CHRYSLER CANADA LTD., ETOBICOKE CASTING PLANT (RESPONDENT).

UNIT: "ALL SECURITY GUARDS EMPLOYED BY CHRYSLER CANADA LTD., AT ITS ETOBICOKE CASTING PLANT, ETOBICOKE, SAVE AND EXCEPT SERGEANTS, PERSONS ABOVE THE RANK OF SERGEANT AND ALL OTHER EMPLOYEES." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2962-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. B.D. McDERMOTT CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

2967-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL #494 (APPLICANT) V. FIRST DEVONSHIRE BUILDING CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

2968-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL #494 (APPLICANT) V. CITATION HOMES AND ASSOCIATES (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

2973-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. LIQUID CARBONIC CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

2982-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. INSPIRATION DRILLING DRESSER INDUSTRIAL PRODUCTS, LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM "CONSTRUCTION LABOURERS" INCLUDES "DIAMOND DRILLERS").

2984-72-R: THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL #10 (APPLICANT) V. HUGH MURRAY LIMITED (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2985-72-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. HARM SCHILTHUIS AND SONS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS, CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

2996-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. UNI RISE CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF

ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3020-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. RULE-BILT LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3021-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. ASELFORD-MARTIN LTD. (RESPONDENT).

UNIT: ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

2786-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. MARSLAND ENGINEERING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (990 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	1084
NUMBER OF PERSONS WHO CAST BALLOTS	931
BALLOTS SEGREGATED AND NOT COUNTED	2
NUMBER OF SPOILED BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	585
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	338

2790-72-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, AMALGAMATED PLANT GUARDS, LOCAL 1958 (APPLICANT) V. WACKENHUT OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL SECURITY GUARDS EMPLOYED AT OR WORKING OUT OF THE PREMISES OF THE RESPONDENT AT WINDSOR, IN THE COUNTY OF ESSEX, SAVE AND EXCEPT INSPECTORS, PERSONS ABOVE THE RANK OF INSPECTOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (185 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF PERSONS ON REVISED VOTERS' LIST	90
NUMBER OF PERSONS WHO CAST BALLOTS	80
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	52
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	28

2806-72-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. ACRO GASKET INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT PRODUCTION MANAGERS, PERSONS ABOVE THE RANK OF PRODUCTION MANAGER, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (30 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	30
NUMBER OF PERSONS WHO CAST BALLOTS	29
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	16
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	13

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

1066-71-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. STYLECRAFT HOMES (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES AND ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

1067-72-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. HARROW MASONRY (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES AND ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

2469-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. PEMBROKE GENERAL HOSPITAL (RESPONDENT).

UNIT #2: "ALL LAY OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT PEMBROKE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

2470-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. PEMBROKE GENERAL HOSPITAL (RESPONDENT).

UNIT #1: "ALL LAY EMPLOYEES OF THE RESPONDENT AT PEMBROKE, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENTS DIETITIANS, CHIEF ENGINEER, SUPERVISORS, PERSONS ABOVE

THE RANK OF SUPERVISOR, OFFICE AND CLERICAL STAFF, TECHNICAL PERSONNEL, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (132 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PHARMACY ASSISTANT AND LABORATORY AND RADIOLOGY TECHNICIANS ARE INCLUDED IN THE TERM TECHNICAL PERSONNEL. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT WARD CLERKS AND LABORATORY ASSISTANTS ARE INCLUDED IN BARGAINING UNIT #1. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS EMPLOYED AT THE LORRAINE SCHOOL OF NURSING ARE NOT INCLUDED IN BARGAINING UNIT #1).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	134
NUMBER OF PERSONS WHO CAST BALLOTS	116
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	90
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	26

UNIT #2: "ALL LAY EMPLOYEES OF THE RESPONDENT AT PEMBROKE, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (17 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	26
NUMBER OF PERSONS WHO CAST BALLOTS	16
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	13
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	3

2517-72-R: CSAO NATIONAL (INC.) (APPLICANT) V. OTTAWA GENERAL HOSPITAL (RESPONDENT) V. LE SYNDICAT DES SERVICES HOSPITALIERS DU DISTRICT D'OTTAWA (INTERVENER).

UNIT #2: "ALL X-RAY TECHNICIANS EMPLOYED BY THE RESPONDENT AT OTTAWA FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT CHARGE TECHNICIAN, PERSONS ABOVE THE RANK OF CHARGE TECHNICIAN, STUDENTS, NUCLEAR MEDICINE TECHNICIANS, OFFICE AND CLERICAL STAFF AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND LE SYNDICAT DES SERVICES HOSPITALIERS DU DISTRICT D'OTTAWA AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	0

2545-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF GLOUCESTER (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF GLOUCESTER, SAVE AND EXCEPT COMMISSIONER OF FINANCE, DIRECTOR OF PLANNING AND WORKS, SECRETARY TO THE DIRECTOR OF PLANNING AND WORKS, SENIOR PLANNER, SENIOR ENGINEER, ROAD SUPERINTENDENT, ACTING RECREATION DIRECTOR, OPERATIONS SUPERVISOR, POOL MANAGER, TOWNSHIP CLERK, SECRETARY TO THE CLERK AND SOLICITOR, DEPUTY CLERK, ADMINISTRATIVE CO-ORDINATOR, SECRETARY TO ADMINISTRATIVE CO-ORDINATOR, SOLICITOR AND INDUSTRIAL COMMISSIONER." (41 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	37
NUMBER OF PERSONS WHO CAST BALLOTS	33
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	30
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	3

2554-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. J. D. ESSON PLUMBING AND HEATING LIMITED (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES, TRUCK DRIVERS AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THAT PORTION OF THE DISTRICT OF ALGOMA SOUTH OF THE 49TH PARALLEL OF LATITUDE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	7
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	0

2574-72-R: NURSES' ASSOCIATION NORTH YORK GENERAL HOSPITAL (APPLICANT) V. NORTH YORK GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY NORTH YORK GENERAL HOSPITAL IN THE BOROUGH OF NORTH YORK ENGAGED IN NURSING CARE, SAVE AND EXCEPT UNIT ADMINISTRATORS, PERSONS ABOVE THE RANK OF UNIT ADMINISTRATOR AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (334 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT NURSES ENGAGED IN A TEACHING CAPACITY ARE NOT INCLUDED IN THE BARGAINING UNIT.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		364
NUMBER OF PERSONS WHO CAST BALLOTS	238	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	205	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	31	

2579-72-R: UNITED PAPERWORKERS INTERNATIONAL UNION (APPLICANT) V. CAMERON PACKAGING INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF EAST GWILLIMBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (34 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		39
NUMBER OF PERSONS WHO CAST BALLOTS	39	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	22	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	17	

2581-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. BARTON PLACE NURSING HOME (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SECURITY GUARDS, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (111 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		96
NUMBER OF PERSONS WHO CAST BALLOTS	85	
BALLOTS SEGREGATED AND NOT COUNTED	7	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	73	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4	

2637-72-R: TEAMSTERS LOCAL UNION No. 879, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. McALISTER MOTORS (BURLINGTON) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BURLINGTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (32 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	32
NUMBER OF PERSONS WHO CAST BALLOTS	31
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	17
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	14

2650-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. PORT COLBORNE GENERAL HOSPITAL (RESPONDENT) V. ONTARIO BRANCH, CANADIAN PHYSIOTHERAPY ASSOCIATION (INTERVENER) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT COLBORNE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (135 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	33
NUMBER OF PERSONS WHO CAST BALLOTS	22
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	21
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1

APPLICATIONS FOR CERTIFICATION DISMISSED DURING DECEMBER

No Vote Conducted

1074-71-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. HARROW MASONRY (RESPONDENT). (2 EMPLOYEES).

1075-71-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. STYLECRAFT HOMES (RESPONDENT). (2 EMPLOYEES).

2034-72-R: SERVICE EMPLOYEES UNION LOCAL 268 AFFILIATED WITH THE S.E.I.U. AF OF L., C.I.O. & C.L.C. (APPLICANT) V. IRON RANGE BUS LINES LIMITED (RESPONDENT). (33 EMPLOYEES).

2099-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. BRINCHESKI BROS CONTRACTORS LTD. (RESPONDENT). (2 EMPLOYEES).

2617-72-R: LENNOX AND ADDINGTON CUSTODIAN ASSOCIATION (APPLICANT) V. THE LENNOX AND ADDINGTON COUNTY BOARD OF EDUCATION (RESPONDENT). (78 EMPLOYEES).

2740-72-R: LOCAL 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL-CIO; CLC (APPLICANT) V. LABATT'S ONTARIO BREWERIES LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR). (16 EMPLOYEES).

2780-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. BASIL (SIMCOE) LIMITED (RESPONDENT). (2 EMPLOYEES).

2808-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION #493 (APPLICANT) V. BLOUIN DRYWALL CONTRACTORS LIMITED (RESPONDENT). (2 EMPLOYEES).

2814-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. MODERN BUILDING CLEANING, DIVISION OF DUSTBANE ENTERPRISES LTD. (RESPONDENT). (4 EMPLOYEES).

2815-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. MODERN BUILDING CLEANING, DIVISION OF DUSTBANE ENTERPRISES LTD. (RESPONDENT). (8 EMPLOYEES).

2819-72-R: INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS (APPLICANT) V. SHERMAN AND ULSTER LIMITED (RESPONDENT). (65 EMPLOYEES).

2843-72-R: THE EMPLOYEES OF TUBE-LOK PRODUCTS LTD. (APPLICANT) V. TUBE-LOK PRODUCTS LTD. (RESPONDENT). (8 EMPLOYEES).

2983-72-R: THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 736 (APPLICANT) V. COOPER CONSTRUCTION CO. EASTERN LIMITED (RESPONDENT). (3 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

2573-72-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) v. PLAYTEX LTD. (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT ARNPRIOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, TECHNICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (368 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	342
NUMBER OF PERSONS WHO CAST BALLOTS	326
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	71
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	254

[1972] 2 OLRB M.R. - PAGE 1027.

2756-72-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., AFL-CIO-CLC (APPLICANT) v. W. E. SAUNDERS LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PROFESSIONAL LABORATORY STAFF." (17 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	16
NUMBER OF PERSONS WHO CAST BALLOTS	14
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

1978-72-R: INTERNATIONAL LEATHER GOODS, PLASTICS & NOVELTY WORKERS' UNION, LOCAL 8 (APPLICANT) v. EROS JEWELLERY MFG. CO. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		7
NUMBER OF PERSONS WHO CAST BALLOTS	7	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING DECEMBER

2022-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. ALLAN G. COOK LIMITED (RESPONDENT). (51 EMPLOYEES).

2884-72-R: CAN. DIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL
WORKERS (APPLICANT) V. PINE HILL AUTO LIMITED (RESPONDENT). (11 EM-
PLOYEES).

2921-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837
(APPLICANT) V. D. W. RANKIN LIMITED (RESPONDENT). (7 EMPLOYEES).

2939-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. LIQUID CAR-
BONIC CANADA LIMITED (RESPONDENT). (1 EMPLOYEE).

2940-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. GIDON INDUS-
TRIES LIMITED (RESPONDENT). (4 EMPLOYEES).

2958-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 247
(APPLICANT) V. STEWART AND HINAN CONSTRUCTION (RESPONDENT). (4 EM-
PLOYEES).

2964-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL
UNION 93 (APPLICANT) V. A. E. RULE-(1965) LIMITED (RESPONDENT). (2 EM-
PLOYEES).

2965-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL
UNION 93 (APPLICANT) V. RULE-BILT LIMITED (RESPONDENT). (2 EMPLOYEES).

2970-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. KINGS-
TON COMMUNITY MEMORIAL CENTRE (RESPONDENT). (17 EMPLOYEES).

2974-72-R: BAKERY & CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMER-
ICA LOCAL 264 (APPLICANT) V. LAURA SECORD CANDY SHOPS LIMITED (OR LAURA
SECORD LIMITED) (RESPONDENT). (550 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING DECEMBER

2560-72-R: BOB KANARY (APPLICANT) V. ONTARIO PROVINCIAL DISTRICT COUNCIL L.I.U.N.A. ON BEHALF OF OIL & GAS BURNER TECHNICIANS UNION LOCAL 1267 (RESPONDENT) V. ALROS PRODUCTS LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF ALROS PRODUCTS LIMITED, CARRYING ON BUSINESS UNDER THE NAME POLYTARP PRODUCTS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	3
NUMBER OF PERSONS WHO CAST BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	1
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	2

2713-72-R: ROBERT BELANGER (APPLICANT) V. LAUNDRY & LINEN DRIVERS AND INDUSTRIAL WORKERS LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (RESPONDENT). (5 EMPLOYEES). (GRANTED).

2732-72-R: RICHARD R. ROMBOUGH (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW), LOCAL 1090 (RESPONDENT). (DISMISSED).

UNIT: "ALL EMPLOYEES OF ONTARIO MACHINE & TOOL WORKS LTD. AT ITS PLANT AT AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, SALES STAFF AND SECURITY PERSONNEL." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	12
NUMBER OF PERSONS WHO CAST BALLOTS	12
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	8
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	4

2876-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 141 (APPLICANT) V. CONNOR TRUCK RENTALS (RESPONDENT). (NO EMPLOYEES). (WITHDRAWN).

2902-72-R: JUDY MCGOLDRICK (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 1423 (RESPONDENT). (19 EMPLOYEES). (WITHDRAWN).

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURINGDECEMBER

3028-72-U: GARTSHORE CONSTRUCTION COMPANY LIMITED (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 446 (RESPONDENT). (GRANTED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING DECEMBER

2276-72-U: THE TORONTO WESTERN HOSPITAL (APPLICANT) V. CANADIAN UNION OF GENERAL EMPLOYEES, PATRICK MURPHY, CYRIL JONES, ANTONIO MAONE, HERNANDO CORONELL, JOHN BOYD, ALFREDO MORELLI, EVA POMBO, MARIA CABRAL, IRENE BIMANN AND MICHAEL DYAL (RESPONDENTS). (GRANTED).

[1972] 2 OLRB M.R. - PAGE 1018.

2723-72-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2679 (APPLICANT) V. INTER-CONTINENTAL-DESIGNS-LIMITED (RESPONDENT). (WITHDRAWN).

2867-72-U: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEATCUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. LOBLAW GROCETERIAS Co. LIMITED (RESPONDENT). (WITHDRAWN).

2868-72-U: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEATCUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. LOBLAW GROCETERIAS Co. LIMITED (RESPONDENT). (WITHDRAWN).

2869-72-U: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 633, CHARTERED BY THE AMALGAMATED MEATCUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. LOBLAW GROCETERIAS Co. LIMITED (RESPONDENT). (WITHDRAWN).

2870-72-U: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 633, CHARTERED BY THE AMALGAMATED MEATCUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. LOBLAW GROCETERIAS Co. LIMITED (RESPONDENT). (WITHDRAWN).

2882-72-U: ARTHUR J. FERJO (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 894, AND DON E. LOUNDS (RESPONDENTS). (GRANTED).

2885-72-U: INTER-CONTINENTAL-DESIGN LIMITED (APPLICANT) V. LOCAL 2679 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT). (WITHDRAWN).

2904-72-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. A. ST. GERMAIN & FILS INC. (RESPONDENT). (WITHDRAWN).

2931-72-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. BELTON-QUINN LUMBER LIMITED (RESPONDENT). (DISMISSED).

3008-72-U: LIQUID CARBONIC CANADA LIMITED (APPLICANT) V. C. ARSENAULT ET AL (RESPONDENTS). (WITHDRAWN).

3010-72-U: LIQUID CARBONIC CANADA LIMITED (APPLICANT) V. UNITED STEELWORKERS OF AMERICA, LOCAL 12998; AND P. GRASSO, T. ROBINSON, B. CICK, T. ROBERTS, A. HOPE, A. MARTIN, M. DEVELLANO, A. BALTKOIS AND S. HAWK (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)

DISPOSED OF DURING DECEMBER

1320-71-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. J. E. MARTEL & SONS LIMITED LTD. (RESPONDENT). (WITHDRAWN).

1973-72-U: CHESTER BROWN (COMPLAINANT) V. CANADIAN FOOD & ALLIED WORKERS' UNION LOCAL P529 (RESPONDENT). (WITHDRAWN).

2012-72-U: INTERNATIONAL LEATHER GOODS, PLASTICS & NOVELTY WORKERS' UNION, LOCAL 8 (COMPLAINANT) V. EROS JEWELLERS MFG. CO. (RESPONDENT). (DISMISSED).

2044-72-U: INTERNATIONAL LEATHER GOODS, PLASTICS & NOVELTY WORKERS' UNION, LOCAL 8 (COMPLAINANT) V. GIFTSON SALES (RESPONDENT). (GRANTED).

2178-72-U: THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261, A.F.L.-C.I.O.-C.L.C., 1091 WELLINGTON STREET, OTTAWA, ONTARIO (COMPLAINANT) V. THE ALEXANDRA HOTEL, 352 BANK STREET, OTTAWA, ONTARIO (RESPONDENT).

- AND -

2253-72-U: THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261, A.F.L.-C.I.O.-C.L.C., 1091 WELLINGTON STREET, OTTAWA, ONTARIO (COMPLAINANT) V. THE ALEXANDRA HOTEL, 352 BANK STREET, OTTAWA, ONTARIO (RESPONDENT).

- AND -

2407-72-U: THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261, A.F.L.-C.I.O.-C.L.C., 1091 WELLINGTON STREET, OTTAWA, ONTARIO (COMPLAINANT) V. THE ALEXANDRA HOTEL, 352 BANK STREET, OTTAWA, ONTARIO (RESPONDENT). (GRANTED).

2196-72-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) V. RAY PLASTICS LIMITED (RESPONDENT). (DISMISSED).

2411-72-U: BEN COFFEY (COMPLAINANT) V. THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (RESPONDENT). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 1016

2490-72-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. EMPIRE PUBLIC HOUSE (RESPONDENT). (GRANTED).

[1972] 2 OLRB M.R. - PAGE 1001.

2563-72-U: SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 204 (COMPLAINANT) V. ROBERT CRUIKSHANK CLEANING CONTRACTORS LTD. (RESPONDENT). (GRANTED).

2612-72-U: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL CIO CLC (COMPLAINANT) V. CANADIAN URETHANE SOLES LIMITED (RESPONDENT). (GRANTED).

2653-72-U: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (COMPLAINANT) V. FAHRINGER MECHANICAL CONTRACTING LTD. (RESPONDENT). (WITHDRAWN).

2656-72-U: ZACHARIAH FRANCIS DAVIS (COMPLAINANT) V. CEMENT MASON UNION LOCAL 151 (RESPONDENT). (WITHDRAWN).

2677-72-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. INVERLEIGH CONSTRUCTION LIMITED (RESPONDENT). (DISMISSED).

2692-72-U: INTERNATIONAL CHEMICAL WORKERS UNION (COMPLAINANT) V. PLAYTEX LTD. (RESPONDENT). (DISMISSED).

2795-72-U: RETAIL CLERKS UNION, LOCAL 486 (COMPLAINANT) V. INTER CITY FOODS SERVICES INC. (RESPONDENT). (WITHDRAWN).

2804-72-U: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (COMPLAINANT) V. WILLIAMS MACHINES LIMITED (RESPONDENT). (WITHDRAWN).

2920-72-U: INTERNATIONAL LEATHER GOODS, PLASTICS & NOVELTY WORKERS' UNION, LOCAL 8 (COMPLAINANT) V. GIFTSON SALES (RESPONDENT). (WITHDRAWN).

2971-72-U: JOHN HOWARD (COMPLAINANT) V. JOHNSON CONTROLS AND IBEW LOCAL 1966 (RESPONDENTS). (DISMISSED).

2972-72-U: DENIS LEDOUX (COMPLAINANT) V. CHAPLEAU LUMBER (RESPONDENT). (DISMISSED).

APPLICATIONS UNDER SECTION 55 (FORMERLY S. 47A) DISPOSED OF DURINGDECEMBER

1634-71-R: TORONTO STAR LIMITED (APPLICANT) V. TORONTO NEWSPAPER GUILD, LOCAL 87 (RESPONDENT). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 995.

2634-72-R: LOCAL UNION 2557 - UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. PINECREST PRODUCTS LIMITED AND FURNITEX CORPORATION LIMITED (RESPONDENTS). (GRANTED).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	42
NUMBER OF PERSONS WHO CAST BALLOTS	38
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	21
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	17

JURISDICTIONAL DISPUTE

2976-72-JD: MASON-KIEWIT (COMPLAINANT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL NO. 46 AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL NO. 506 (RESPONDENTS). (DISMISSED).

APPLICATION FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))DISPOSED OF DURING DECEMBER

2716-72-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 72 (APPLICANT) V. THE PUBLIC UTILITIES COMMISSION OF COCHRANE (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

2446-72-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. LECOURS LUMBER COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

2798-72-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. SQUARE D COMPANY CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

[1972] 2 OLRB M.R. - PAGE 1036.

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79(FORMERLY S. 65)

1756-71-U: A. J. FERJO (COMPLAINANT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 894, OSHAWA (RESPONDENT). (REQUEST DENIED).

2460-72-U: NORMAN BEAUVAIS (COMPLAINANT) V. UNION LOCAL #1332 PRESIDENT MR. ERNIE APPLETON (RESPONDENT). (REQUEST DENIED).

2971-72-U: JOHN HOWARD (COMPLAINANT) V. JOHNSON CONTROLS AND IBEW LOCAL 1966 (RESPONDENTS). (REQUEST DENIED).

STATISTICAL TABLES FOR THIRD 3 MONTHS (OCTOBER - DECEMBER) FISCAL YEAR 1972-73

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	3RD QUARTER ¹	1ST 9 MONTHS FISCAL YEAR	
	FISCAL YEAR 1972-73	1972-73	1971-72
I. CERTIFICATION	295	831	727
II. DECLARATION TERMINATING BARGAINING RIGHTS	18	49	58
III. DECLARATION OF SUCCESSOR STATUS	9	21	14
IV. DECLARATION THAT STRIKE UNLAWFUL	7	33	39
V. DECLARATION THAT LOCK-OUT UNLAWFUL	1	2	1
VI. CONSENT TO PROSECUTE	26	78	150
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 79) (FORMERLY S. 65)	68	170	141
VIII. MISCELLANEOUS	<u>42</u>	<u>108</u>	<u>91</u>
TOTAL	<u>466</u>	<u>1292</u>	<u>1221</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	3RD QUARTER	1ST 9 MONTHS FISCAL YEAR	
	FISCAL YEAR 1972-73	1972-73	1971-72
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	278	839	792

¹ OCTOBER TO DECEMBER.

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	3RD QUARTER	1ST 9 MONTHS FISCAL YEAR	
	FISCAL YEAR 1972-73	1972-73	1971-72
I. CERTIFICATION	305	810	715
II. DECLARATION TERMINATING BARGAINING RIGHTS	16	44	56
III. DECLARATION OF SUCCESSOR STATUS	2	13	6
IV. DECLARATION THAT STRIKE UNLAWFUL	4	26	36
V. DECLARATION THAT LOCK-OUT UNLAWFUL	2	2	3
VI. CONSENT TO PROSECUTE	54	114	156
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 79) (FORMERLY S. 65)	56	175	115
VIII. MISCELLANEOUS	<u>26</u>	<u>94</u>	<u>91</u>
TOTAL	465	1278	1178
	<u><u> </u></u>	<u><u> </u></u>	<u><u> </u></u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	3RD QUARTER	1ST 9 MTHS F.Y.		3RD QUARTER	1ST 9 MTHS F.Y.	
	FISCAL YEAR	FISCAL YEAR		FISCAL YEAR	FISCAL YEAR	
	<u>1972-73</u>	<u>1972-73</u>	<u>1971-72</u>	<u>1972-73</u>	<u>1972-73</u>	<u>1971-72</u>
I. <u>CERTIFICATION</u>						
GRANTED	205	543	421	7739	16984	11403
DISMISSED	64	177	212	4012	10182	8465
WITHDRAWN	<u>36</u>	<u>90</u>	<u>82</u>	<u>1072</u>	<u>2471</u>	<u>1542</u>
TOTAL	305	810	715	12823	29637	21410
	<u>==</u>	<u>==</u>	<u>==</u>	<u>==</u>	<u>==</u>	<u>==</u>

II. TERMINATION
OF BARGAINING
RIGHTS

GRANTED	5	22	26	33	457	2134
DISMISSED	9	16	22	216	248	649
WITHDRAWN	<u>2</u>	<u>6</u>	<u>8</u>	<u>58</u>	<u>122</u>	<u>367</u>
TOTAL	16	44	56	307	827	3150
	<u>==</u>	<u>==</u>	<u>==</u>	<u>==</u>	<u>==</u>	<u>==</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS		
		3RD QUARTER	1ST 9 MTHS FISCAL YR.	
		FISCAL YEAR		
		1972-73	1972-73	1971-72
<u>III. DECLARATION THAT STRIKE</u>				
<u>UNLAWFUL</u>				
GRANTED	1	5	8	
DISMISSED	-	5	4	
WITHDRAWN	<u>3</u>	<u>16</u>	<u>26</u>	
TOTAL	4	26	38	
	=	=	=	
<u>IV. DECLARATION THAT LOCK-</u>				
<u>OUT UNLAWFUL</u>				
GRANTED	-	-	-	
DISMISSED	1	1	2	
WITHDRAWN	<u>1</u>	<u>1</u>	<u>-</u>	
TOTAL	2	2	2	
	=	=	=	
<u>V. CONSENT TO PROSECUTE</u>				
GRANTED	2	15	30	
DISMISSED	27	32	62	
WITHDRAWN	<u>25</u>	<u>67</u>	<u>64</u>	
TOTAL	54	114	156	
	=	=	=	
<u>VI. COMPLAINT OF UNFAIR</u>				
<u>PRACTICE IN EMPLOYMENT</u>				
<u>(SECTION 79) (FORMERLY</u>				
<u>S. 65).</u>				
GRANTED	7	13	15	
DISMISSED	23	67	26	
WITHDRAWN	<u>26</u>	<u>95</u>	<u>74</u>	
TOTAL	56	175	115	
	=	=	=	

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF APPLICATIONS		
	3RD QUARTER	1ST 9 MTHS FISCAL YR.	
	FISCAL YEAR 1972-73	1972-73	1971-72
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	10	28	24
POST-HEARING VOTE	28	54	45
BALLOTS NOT COUNTED	-	2	1
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	11	29	25
POST-HEARING VOTE	9	42	49
BALLOTS NOT COUNTED	<u>1</u>	<u>3</u>	<u>1</u>
TOTAL	59	158	145
	<u>==</u>	<u>==</u>	<u>==</u>
*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.			

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	3RD QUARTER	1ST 9 MTHS FISCAL YR.	
	FISCAL YEAR 1972-73	1972-73	1971-72
*RESPONDENT UNION SUCCESSFUL	1	1	1
RESPONDENT UNION UNSUCCESSFUL	<u>1</u>	<u>10</u>	<u>15</u>
TOTAL	2	11	16
	<u>==</u>	<u>==</u>	<u>==</u>

*IN TERMINATION PROCEEDING WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYEES; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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